

*Bengal Tenancy Bill.**(Chapter XV.—Sale of Transferable Holdings in Execution, &c. Secs. 215—222.)*

225(c). **215** (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings in that local area shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

211.
233. **216.** (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of

1882. the Code of Civil Procedure, shall be observed, that is to say:—

(a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(b) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

(c) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(d) The balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

204.
226.
1882. Holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

217. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a holding in execution of such a decree has been made, the holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(3) Nothing in this section shall affect the right of any person to institute a suit to set aside the sale of a holding under this chapter.

218. (1) When any person having, in a holding D. ss. 35, 36, 154.
Amount paid into Court advertized for sale under C. B. s. 205.
to prevent sale to be in this chapter, an interest B. B. s. 227.
certain cases a mortgage- which would be voidable
debt on the holding. upon such sale, pays into
Court the amount requisite to prevent the sale,

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum and secured by a mortgage of the holding to him;

(b) his mortgage shall, subject to the provisions of section 125, be deemed to be the first charge on the holding; and

(c) he shall be entitled to take possession of the holding as mortgagee, and retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

219. When a holding is advertised for sale under D. ss. 35, 36, 154.
this chapter in execution of C. B. s. 205.
Inferior tenant paying a decree against a superior B. B. s. 227.
into Court may deduct a tenant defaulting, and an
from rent. inferior tenant, whose interest would be voidable
upon the sale, pays money into Court in order
to prevent the sale, he may, in addition to any
other remedy provided for him by law, deduct
the whole or any portion of the amount so
paid from any rent payable by him to his im-
mediate landlord; and, if that landlord is not the de-
faulter, he may in like manner deduct the amount
so deducted from any rent payable by him to his
immediate landlord, and so on until the defaulter
is reached.

220. (1) Notwithstanding anything contained C. B. s. 205(1).
in section 294 of the Code of B. B. s. 230(1).
Decree-holder may bid in section 294 of the Code of Civil Procedure, the holder XIV of 1882.
at sale; judgment-debt- of a decree in execution of
or may not. which a holding is sold under this chapter may
without the permission of the Court bid for or
purchase the holding.

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

221. Sections 313 and 326 of the Code of Civil Procedure shall not apply to XIV of 1882.
Operation of sections
313 and 326 of Code of
Civil Procedure excluded.

222. Notwithstanding anything contained in New.
Registration of cer- Part IV of the Indian
tain instruments creating Registration Act, 1877, an III of 1877.
incumbrances. instrument creating an in-
cumbrance upon any transferable holding which
has been executed before the commencement of
this Act, and is not required by section 17 of the
said Registration Act to be registered, shall be
accepted for registration under that Act if it is
presented for that purpose to the proper officer
within one year from the commencement of this
Act.

223. Every officer who has, whether before or C. B. s. 206
after the passing of this Act, Expl.
registered an instrument exe- B. B. s. 229
cuted by a tenant of a trans- Expl.
ferable holding and creating
an incumbrance on the holding, shall, at the request

*Bengal Tenancy Bill.**(Chapter XVII.—Supplementary. (Schedule I.—Repeal of Enactments.)*

of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, cause a copy of the instrument to be served on the landlord in the manner prescribed in Part VII of the Indian Registration Act, 1877, for the service of summons.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

CHAPTER XVI.

OF LIMITATION.

224. The suits, appeals and applications specified in Schedule IV annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

229. Any appearance, application or act in, before, or to, any Court or other authority required or authorized by this Act to be made or done by a landlord may, unless the Court or authority otherwise directs, be made or done also by a náib or gumáshta of the landlord empowered in this behalf by a written authority under the hand of the landlord; and every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, a náib or gumáshta of the landlord empowered as aforesaid to accept service of or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

230. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

CHAPTER XVII.

SUPPLEMENTARY.

226. Nothing in this Act shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

227. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same; and

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil.

228. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

SCHEDULE I.

(See Section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793 .	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zemindars, independent talukdars, and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64, and 65.
XII of 1805 .	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattáspur, Kummadichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V of 1812 .	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.

Bengal Tenancy Bill.

(Schedule I.—*Repeal of Enactments, and Schedule II.—Extract from Preamble to Regulation VIII of 1819.*)

SCHEDULE I—*contd.*

Number and year.	Subject of Regulation.	Extent of repeal.	Number and year.	Subject of Act.	Extent of repeal.
XVIII of 1812 .	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	Preamble and Sections 2 and 3.	VIII of 1869 .	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1819 .	A Regulation to declare the validity of certain tenures, and to define the relative rights of zamindárs and patni taluqdárs; also to establish a process for the sale of such taluqs in satisfaction of the zamindár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.	VIII of 1879 .	An Act to define and limit the powers of Settlement-officers.	The whole Act.
I of 1820 .	A Regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamindár's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whole Regulation.	<i>Acts of the Governor General in Council.</i>		
XI of 1825 .	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In Clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the Clause.	XXV of 1850 .	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
			XXXIII of 1850 .	An Act for amending the forms necessary for the sale of patni tenures in Bengal.	The whole Act.
			VI of 1853 .	An Act relating to summary suits for arrears of rent, to sales of patni taluqs and other saleable Tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
			X of 1859 .	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862 .	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
VIII of 1865 .	An Act to amend the law for the sale of such undertenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.	The whole Act.
IV of 1867 .	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.

SCHEDULE II.

(See Section 36.)

Extract from Preamble to Regulation VIII of 1819.

"In the exercise of the privilege * * * conceded to zamindárs under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Bardwán, but has since been extended to other zamindáris; the character of which tenure is, that it is a taluq created by the zamindár, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamindár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamindár.

*Bengal Tenancy Bill.**(Schedule III.—Summary Sale of Patní Tenures.)*

"By the terms also of the engagements interchanged, it is, amongst other stipulations, provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamíndár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

"These tenures have usually been denominated patní taluqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons who, on taking such leases, went by the name of darpatní taluqdárs: these, again, sometimes similarly underlet to bepatnídárs; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder."

SCHEDULE III.

SUMMARY SALE OF PATNÍ TENURES.

(See section 42.)

Extract from Regulation VIII of 1819, amended in accordance with subsequent enactments.

8. *First.*—Zamíndárs, that is, proprietors under direct engagements with the Government, shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.

The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

Second.—On the first day of Baisákh, that is, at the commencement of the following year from that of which the rent is due, the zamíndár shall present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any taluqdárs or other holders of an interest of the nature described in the preceding clause of this section.

The same shall then be stuck up in some conspicuous part of the kachahrí, with a notice that if the amount claimed be not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

Should, however, the first of Jeth fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the sadr kachahrí of the

zamíndár himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the kachahrí or at the principal town or village upon the land of the defaulter.

The zamíndár shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kachahrí of the nearest munsif, or if there should be no munsif, to the nearest thaná, and there make voluntary oath of the same having been duly published; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Third.—On the first day of Kártik, in the middle of the year, the zamíndár shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the zamíndár, according to the kistbandí, calculated from the commencement of the year to the last day of Kártik.

9. All sales of saleable tenures applied for under the rules of this Regulation shall be made in public kachahrí; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount

*Bengal Tenancy Bill.**(Schedule III.—Summary sale of Patni Tenures.)*

required to be deposited is in hand for the purpose, or will be produced within two hours.

If the fifteen per cent. be not paid in cash, * * * * * within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sadr station of the zila, after which the lot shall be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

10. At the time of the sale, the notice previously stuck up in the kachahri shall be taken down, and the lots be called up successively in the order in which they may be found in that notice.

A person shall attend on the part of the zamindar, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the mufassal, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate rubakari to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the kistbandi of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The zamindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

11. *First.*—It is hereby declared, that any taluq or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears

of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said taluq may have been held.

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zamindar to hold the tenure of his creation answerable, in the state in which he created it, for the rent which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zamindar.

Second.—In like manner, on sale of a taluq for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the raiyats; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

* * * * *

13. *First.*—With reference to the injury that may be brought upon the holder of a taluq of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the zamindar, after having realised his own dues from the inferior tenantry, it is deemed necessary to allow such taluqdars the means of saving their tenures from the ruin that must attend such a sale; and the following rules have accordingly been enacted for this purpose.

Second.—Whenever the tenure of a taluqdar of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation, for arrears of rent due to the zamindar, the taluqdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into the Collectorate the amount of balance that may be declared due by the person attending on the part of the zamindar on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but after

*Bengal Tenancy Bill.**(Schedule III.—Summary sale of Patni Tenures.)*

making good to the zamindár the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

Third.—If the amount so lodged shall be rent due by the inferior taluq-dár to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

Fourth.—If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluq so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage, and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto.

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realised from the usufruct of the tenure.

14. First.—Should the balance claimed by a zamindár on account of the rent of any under-tenure remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

It shall, however, be competent to any party desirous of contesting the right of the zamindár to make the sale, whether on the ground of there

having been no balance due, or on any other ground, to sue the zamindár for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages.

The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zamindár or person at whose suit the sale may have been made.

Second.—In cases also in which a taluqdár may contest the zamindár's demand of any arrear, as specified in the notice advertised, such taluqdár shall be competent to apply for a summary investigation at any time within the period of notice; the zamindár shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the zamindár or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, * * * * * or in Government securities, by the taluqdár contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.

15. First.—So soon as the entire amount of the purchase-money shall have been paid in by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the kachahri of the zamindár, and upon furnishing security, if required, to the extent of half the jama or annual rent, he shall receive the usual 'amaldastak' or order for possession, together with the notice to the raiyats and others to attend and pay their rents henceforward to him.

The zamindár shall also be bound to furnish access to any papers connected with the tenure purchased, that may be forthcoming in his kachahri; and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Collector; and he shall receive the orders for possession, and shall be

*Bengal Tenancy Bill.**(Schedule III.—Summary sale of Patni Tenures.)*

put in possession, of the lands by means of the nâzir, in the same manner as possession is obtained under a decree of Court; * * *

* * * * *

Second.—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Collector for the aid of the public officers in obtaining possession of his just rights.

A proclamation shall then issue under the seal and signature of the Collector declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamîndâr, acquired the entire rights and privileges attaching to the tenure of the late taluqdâr, in the state in which it was originally derived by him from the zamîndâr, he alone will be recognized as entitled to make the zamîndârî collections in the mufassal, and no payments made to any other individual will on any account be credited to the raiyats or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

Third.—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the Police-officers and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

* * * * *

17. First.—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Second.—One per cent. shall first be deducted from the nett proceeds realised, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

Third.—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the taluq to sale) to the zamîndâr or other person to whom the same may be due; provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied.

Such antecedent balances, if the zamîndâr shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual taluqdâr, and must be recovered in the same way as other debts by a regular suit in the Court.

Fourth.—Any excess that may remain after satisfying the demand of the zamîndâr, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit to answer the claims of the taluqdârs of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the taluq sold, or on any part of it.

Fifth.—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realised from him by the usual process for the execution of decrees.

Sixth.—Provided, however, that no taluqdâr of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may

Suit not to lie if under tenant be himself in arrear at time of sale.

Bengal Tenancy Bill.
(Schedule IV.—Limitation.)

be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior taluq, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

Seventh.—Should no claims upon the purchase-money of a taluq sold as above be brought forward by any under-tenants or assignees, within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt.

In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Eighth.—It shall be competent to any party interested in a deposit, to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received.

SCHEDULE IV.

(See Section 224.)

PART I.—Suits.

Description of suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year	The date of the breach.

SCHEDULE IV.—continued.

PART I.—Suits.—concluded.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
2 For the recovery of an arrear of rent— (a) when the arrear fell due before a deposit was made on account of the rent of the same holding under section 103.	Six months	The date of the deposit.
(b) in other cases	Three years	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.

PART II.—Appeals.

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
3. From any decree or order under this Act to the Court of a District Judge.	Thirty days	The date of the decree or order appealed against.
4. From any order of a Collector under this Act to the Commissioner.	Thirty days	The date of the order appealed against.

PART III.—Applications.

Description of Application.	Period of Limitation.	Time from which period begins to run.
5. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree.	Three years	(1) The date of the decree of order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

STATEMENT OF OBJECTS AND REASONS.

THE history of landlord and tenant legislation in Bengal, and of the circumstances which have led to the preparation of the present Bill, is given in full detail in the papers which have been published. A very brief summary of it must suffice here.

Immediately before the Permanent Settlement was made, the Court of Directors, in conveying instructions to the Government here regarding it, wrote as follows* :—

"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced. * * * *

You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere, from time to time, as it may be necessary, for the protection of the raiyats and subordinate landlords, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right as sovereigns of being the guardians and protectors of every class of persons living under our Government."

2. In conformity with these instructions, an article was inserted in section 8 of Regulation I of 1793, by which the Permanent Settlement was effected, expressly saving the right of the Government to legislate for the protection of persons having interests in the soil below those of the zamíndárs. It need hardly be said that any such saving was, strictly speaking, superfluous, inasmuch as the Government of an agricultural country like India would, apart altogether from it, be entitled, or rather bound, to legislate from time to time, as occasion might require, for the protection of the inferior occupants of the soil. But the article is important as showing that the view taken of the relations between the Government, the zamíndárs and the inferior landholders under the Permanent Settlement was the same in 1793 as it is to-day.

The article runs as follows :—

"To prevent any misconstruction of the foregoing articles" (fixing the Government revenue for ever) "the Governor General in Council thinks it necessary to make the following declarations to the zamíndárs, independent taluqdárs and other actual proprietors of land :—*First*, it being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil; and no zamíndár, independent taluqdár or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

3. Again, it was enacted by section 67 of Regulation VIII of 1793 (a Regulation re-enacting, with modifications, the rules for the Decennial Settlement) that proprietors should be bound by the restrictions in their kabuliyaats, and the 9th of these, as stated by Harington (Vol. II, page 255), was "that implicit obedience be shown to all regulations which have been or may be prescribed by Government concerning the rents of the raiyats and the collections from undertenants and agents of every description, as well as from all other persons whatever."

4. The most important enactment passed in pursuance of these provisions is Act X of 1859, the substantive provisions of which, either in their original form or as re-enacted in Act VIII of 1869† (of the Bengal Council), still govern the relations of landlord and tenant in Bengal.

The effect of Act X of 1859 is admitted to have been on the whole beneficial; but on certain important points it cannot be considered a success. In particular, as will presently be explained at greater length, it placed the right of occupancy, which it recognized in the tenant, and the right to enhance rent, which it recognized in the landlord, on a most precarious footing. The result of this has been that, as usually happens with a law which is uncertain in its operation, it has added strength to the strong and further weakened those who were already weak. In Bihár, where the social and economical conditions of the country tend to give the landlords the upper hand, we hear of tenants rack-rented, subjected to *quasi-feudal* oppressions and arbitrarily ousted from their holdings; in Eastern Bengal, on the contrary, where circumstances favour the tenants, we hear of landlords who not only cannot obtain the enhancements of rent to which they are entitled, but at times, when tenants combine against them, cannot even recover what is admitted to be due at existing rates.

5. The difficulties connected with Act X of 1859 began to be felt at an early period. It received the assent of the Governor General on the 29th of April, 1859, and before the end of 1863 its amendment had been suggested by Sir Barnes Peacock, the Chief Justice of Bengal, and by the Revenue-authorities of the North-Western Provinces. Of late years, successive Lieutenant-Governors of Bengal have borne witness to the existence of chronic evils, which nothing short of comprehensive legislation could cure. In 1873, Sir George Campbell had no

* Harington II, pp. 191-92.

† Throughout this Statement Act X of 1859 only will be referred to. It will be understood that what is said regarding it applies equally to Act VIII of 1869.

doubt that the Government would be eventually compelled to deal with the whole question of the relations of landlords and raiyats in Bengal. In 1876, in the course of the debates on the Agrarian Disputes Act, a measure devised to meet the difficulties between landlords and tenants in Eastern Bengal, the Hon'ble Kristodás Pál, a representative of the zamíndárs, urged that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a dead-lock. Sir R. Temple concurred in the opinion that some principle for determining rates of rent should be fixed by legislation, and in August, 1876, proposed to introduce a Bill to define the principles on which the rights of occupancy-raiyats and tenure-holders should be fixed, to simplify the procedure for realizing arrears of rent in undisputed cases, to extend the definition of "occupancy-raiyat," and to render the interest of a raiyat of that class liable to sale for default in paying rent and transferable by private agreement.

These proposals had not, however, been fully considered when Sir R. Temple, early in 1877, made over charge of the Lieutenant-Governorship to Sir Ashley Eden; and it was then arranged that the larger amendment of the law should be deferred, and a Bill providing only for the realization of undisputed arrears introduced at once.

6. It was, however, found, when the Bill was introduced, that it was impracticable to limit its scope in this way. The discussion as to the transferability of the right of occupancy had materially advanced, and it had been recognized that the legislature would have to alter the law with reference to ejectment, distraint, instalments and deposits of rent, and possibly sub-letting. It began to be apparent that many of the proposed provisions would eventually prove to be intimately connected with other portions of the existing law not ostensibly affected by them; and in February, 1879, a majority of the Select Committee on the Bill recommended that the whole subject of a revision of the Rent Law should be once for all fairly faced. This proposal was supported by Sir Ashley Eden; and in April, 1879, the Government of India sanctioned the formation of a Commission to prepare a digest of the existing statute and case law, and to frame the draft of a consolidating Bill.

7. Meanwhile, a separate discussion had been proceeding with reference to the abuses already mentioned as prevailing in the relations between landlords and tenants in Bihár. As far back as the year 1868, Lord Lawrence, then Governor General, had recorded a minute relating to the depressed state of the peasantry in Bihár, in which he had said that he believed "that it would be necessary for the Government sooner or later to interfere and pass a law which should thoroughly protect the raiyat and make him—what he is now only in name—a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it." Again, in the years 1875 and 1876, when the condition of Bihár came under consideration, it was acknowledged that some remedies must be applied. Two years later, the Lieutenant-Governor appointed a committee of experienced Bihár officials to advise upon the matter; and on the 8th March, 1879, they submitted their report, proposing so many changes of the existing law that they did not consider that the requirements of the case would be properly met by a mere amending Bill. They were of opinion that the whole rent law should be recast.

8. Thus, two independent committees arrived simultaneously at the same conclusion, namely, that the time for a complete revision of the existing law had arrived.

The report of the Bihár committee was referred to the Rent Law Commission, which was appointed under the sanction referred to above (paragraph 6), and that Commission, on the 19th June, 1880, submitted its report with a draft Landlord and Tenant Bill, which, having been revised by the Government of Bengal, has furnished the basis of the present Bill.

9. Before proceeding to give the explanations usual in a statement of this description, it should be mentioned, first, that these explanations will, as far as possible, be confined to points on which it is proposed to alter the existing law, and secondly, that the Bill is no more than it purports to be, namely, a Bill to amend and consolidate existing enactments.

10. With reference to this latter remark, it will be observed that the Bill prepared by the Rent Commission was intended to be in some sense a code of the law relating to agricultural tenancies. It, in many instances, incorporated portions of the common law or case law which have not hitherto been embodied in any legislative enactment in this country. In this respect the present Bill does not follow that of the Rent Commission; but it must not be inferred from this that the views of the Government of India on the important subject of codification have undergone any change. It may be desirable, at some future time, to carry out the design of the Rent Commission in its integrity, and make the Bengal Tenancy Act a complete and self-contained statement of the whole law; but it has been considered that the work of codification is one to be undertaken at a season of leisure, and not at a time like the present, when those, who are responsible for the framing of our legislative measures, are absorbed in the consideration of important substantive amendments of particular portions of the existing law, and are consequently unable to devote to the law as a whole that amount of attention, which would be required in order to carry out the work of codification with any prospect of success.

In the following portions of this Statement the order of the Bill will, as far as possible, be adhered to.

CHAPTER I.—*Preliminary.*

11. The Bill, it will be observed (section 1), extends by its own vigour to the whole of the territories under the administration of the Lieutenant-Governor of Bengal, except the town of Calcutta, the Division of Orissa and the Scheduled Districts.

The Lieutenant-Governor is specially empowered by section 1 to extend the whole Bill, or any portion of it, to the Orissa Division, with the sanction of the Governor General in Council, and he can, with like sanction, extend the whole, or any portion of it, to any Scheduled District under the power conferred on him by the Scheduled Districts Act.

12. The classes of tenants, to which the provisions of the Bill apply, are (section 3 (8)) tenure-holders, raiyats, under-raiyats and persons having a certain interest in *bastu* land, which will be found explained further on under the head of Chapter VII.

13. The term "tenure-holder" as used in the Bill is defined (section 3 (3) and (4)) to include what are commonly known as undertenure-holders, that is to say, *darpatnidárs*, *sepatnidárs*, *darijaradárs* and such like; and also tenants of the class hitherto known as raiyats at fixed rates. The inclusion of tenants of this latter class in the definition is convenient from the draftsman's point of view, but is, it is believed, otherwise of little importance, inasmuch as the incidents which are attached to their holdings place them to all practical intents and purposes on the same footing as tenure-holders.

14. The term "raiayat" has, following the Bill prepared by the Rent Law Commission, been limited to tenants holding land for purposes of agriculture, horticulture or pasture, or who have come into possession for such purposes, except where *bastu* or homestead land is included in a raiyat's agricultural holding, in which case it will be treated in the same way as the rest of the holding, and he will be deemed to hold it as a raiyat.

15. Except as just stated, no attempt has been made to define the terms "tenure-holder" and "raiayat," or to settle the distinction between these two classes of tenants.

The importance of this distinction for the purposes of the Bill has not been overlooked, nor has the possibility that cases may occur near the line of separation between the two classes, in which a doubt will arise as to whether the tenant is a tenure-holder or a raiyat; but it is believed that the distinction is generally well understood, and that, save in exceptional cases, no difficulty will arise. However this may be, no complete definition has as yet been suggested which would not be certain to give rise to difficulties greater than those which it is intended to remove.

16. Under-raiyat, as defined in the Bill, includes all tenants holding whether immediately or mediately below a raiyat.

17. Section 4, besides saving certain special laws which would, as a matter of course, be saved in a general enactment of this description, provides that nothing in the Bill "shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions."

A saving of this description is unavoidable in a measure which, as already observed, does not purport to be an exhaustive code, and its importance will be seen from the illustration appended, which shows that it will protect such rights as rights of occupancy enjoyed under a custom by under-raiyats, a class of tenants protected only to a limited extent by the Bill.

CHAPTER II.—*Of the distinction between khámár and raiyatí land.*

18. The second chapter of the Bill deals with the distinction between "khámár land," or the private land of the proprietor, and raiyatí land, or the land destined for occupation by raiyats. The importance of this distinction arises chiefly from the circumstance that raiyats occupying land of the latter class will, under the Bill, enjoy a much larger measure of protection than those occupying land of the former class. Bearing this in mind, and having regard to the efforts made by landlords in some parts of the country, under the existing law, to get into their own hands as large an amount of the raiyatí land as possible and convert it into khámár land, it has been thought necessary to make it clear by the definition that the existing stock of khámár land cannot hereafter be increased, and further to enact (section 6) that all land which is not khámár land shall be deemed to be raiyatí land, and that all land shall be presumed to be raiyatí land until the contrary is proved.

19. In Bilár, owing to the large extent of the khámár, or, as it is there termed, "zeraat", land, and the persistent efforts made by the landlords and their lessees to increase its extent, the question is one of cardinal importance; and there may be other exceptional tracts where the necessity of distinguishing clearly and finally between khámár and raiyatí land may prove to be pressing. To meet such cases, it is further thought necessary to provide (sections 7 to 13)

for making a complete survey and record of the existing khámár or zeraat, and thus preclude all possibility of future disputes on the point.

CHAPTER III.—Of Tenure-holders generally.

20. The alterations which it is proposed to make in the existing law regarding tenures, are not of great importance.

Section 14 converts the present raiyats at fixed rates into tenure-holders, but, as already explained (*supra*, paragraph 13), the change is unimportant.

21. Section 20, which saves to a landlord in a temporarily-settled tract a right to raise the rent of any tenure when a new settlement of the revenue is made, is new; but it may be defended as being in accordance with the views that prevail as to the relative position of the landlord, the tenant and the Government in such tracts. The Government has an undoubted right to raise its revenue on the occasion of a fresh settlement. Of this right no act of the landlord can deprive it; and accordingly, if the landlord were to be bound by a grant at fixed rates, made by him so as to extend beyond the term of the settlement, the result would be that, on the occasion of a new settlement, he might be exposed to the risk of having to pay an enhanced revenue without the possibility of recovering it from his tenant.

22. The Rent Commissioners observe that there are in the existing law no express provisions for the enhancement of the rents of tenures, and that the want of a definite enactment on the point has given rise to much expensive litigation. The sections of the Bill relating to this matter are based on those drafted by the Commissioners, and the grounds on which they rest will be best seen from the following extract from the Commissioners' report:—

"We have," they say, "provided for the enhancement of the rent of tenures and undertenures, by enacting that, in any case in which such rent is liable to enhancement,—there are cases in which it is not so liable,—it may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or undertenures in the vicinity, or, where no such customary rate exists, up to such limit as to the Court shall appear fair and equitable, but so that the profit of the tenure-holder or undertenure-holder shall not (in the absence of certain special circumstances, to be noticed hereafter) exceed thirty per centum of the balance which remains after deducting, from the gross rents payable to him, the expenses of collecting such rents. It may be observed that, according to the rule contained in section 8 of Regulation V of 1812, ten per cent. of the balance just mentioned was allowed to the tenure-holder. This section was repealed by Act X of 1859, but, by some oversight, no provision was substituted by this Act, though the principle, as being fair and equitable in itself, and usual by reason of the provisions of the Regulation, was, on several occasions, acted upon by the Courts after that Act was passed. It appears to a majority of us, after careful consideration, that the limit of ten per cent. is too low, and we have accordingly allowed a higher limit, namely, that of a maximum not exceeding thirty per cent. in ordinary cases.* We have provided for the special and well-known case of *jangalbari* holdings by enacting that, when more than one hundred bighás of land have been demised for reclamation purposes, more than half being at the time unreclaimed, and the whole having been subsequently reclaimed, the rent of the tenant may not be enhanced so as to leave him a profit of less than twenty per cent. of the net balance above-mentioned, and the Court may allow him such profit in excess of twenty per cent. as to it appears fair and equitable. In order to prevent these new provisions from working hardship by any sudden and great change, we have annexed the following checks:—(a) the enhanced rent shall not in any case be more than double the previous rent: (b) the Court may direct that the enhancement shall take effect gradually, or, in other words, that the rent shall increase yearly during any number of years not exceeding five, until the limit of the enhancement allowed has been reached: and (c) that rent once enhanced shall not be altered for ten years unless on account of alluvion or diluvion."

23. The only further points calling for notice in connection with these sections are, that it has been provided that the tenure-holder's profits shall never be less than 10 per cent. of the net balance, that the provision regarding *jangalbari* tenures has been made applicable to all such tenures irrespective of the area comprised in them, and that a clause has been added providing that, when a tenure-holder has made improvements other than those referred to by the Commissioners, the Court may allow him such amount, by way of profit, as it thinks fit, provided it be not less than 10 per cent.

* Mr. Justice Levinge mentions, in his Minute on Act X, a case in which *two-thirds* (he does not say, whether of the gross or net collections) were given to the landlord and the residue to the middleman. If the calculation was here made on the net collections, the collection expenses being at ten per cent., the middleman got 30 per cent., being $100 - 2(100-10) = 10$.

24. In section 26, it is enacted that a permanent tenure-holder shall not be ejected by his landlord except under a decree of Court passed on the ground that he has broken a condition, on breach of which he is, under a written contract between him and his landlord, liable to be ejected.

25. The alterations which are made in the existing law by sections 27 to 35, relating to the registration in the landlord's *serishta* of transfers of, and successions to, permanent tenures, are (so far as they seem to call for notice) as follows:—

- (a) A fee is made payable in respect of the registration of every succession and every transfer other than a transfer on a sale for arrears of rent.
- (b) An application for the registration of a voluntary transfer or a succession may, instead of being made to the landlord, be made to a Revenue-officer, who will serve a notice on the landlord requiring him to register.
- (c) Where a tenure is sold in execution of a decree other than a decree for arrears of rent, the Court will cause a notice to be served on the landlord requiring him to register the transfer.
- (d) If a landlord refuses or neglects to register for one month after he is bound to do so, the persons interested may apply to the Civil Court to compel him to register.
- (e) Similarly, if the party or parties concerned do not apply for registration within six months from the date of a voluntary transfer or a succession, the landlord may apply to have him or them compelled to allow the registration and pay the requisite fee.
- (f) The landlord is required to give to the parties concerned copies of entries in his register; the first copy to be given free of charge, subsequent copies on payment.
- (g) The Board of Revenue is empowered to make rules regulating registration.

26. The proposal of the Rent Commission to extend the registration system to occupancy-holdings has not been adopted, as it is feared that there would be great difficulty in bringing home to persons of the *raiya* class the details of such a system.

CHAPTER IV.—Of *Patni* Tenures.

27. The law relating to *patni* tenures is left substantially unchanged. The various proposals which have been made for the amendment of the summary sale procedure have not been overlooked; but it is thought that, as they touch only matters of detail relating to an institution of a very special nature, they would be best considered at the Select Committee stage of the Bill, when it is hoped it may be found possible to simplify the form of the law very much without materially changing its substance. Meantime, the existing enactments have been thrown into Schedule III of the Act, and are made operative by section 42.

CHAPTER V.—Of *Raiyats with a Right of Occupancy*.

28. Chapter V, which treats of the acquisition of the occupancy-right and of the incidents generally of that right, is one of the most important chapters in the Bill.

It will be seen, from the papers that have been published in connection with this measure, that a controversy has arisen, and has been conducted on both sides with much ability and research, as to whether some such right as that which we usually term a right of occupancy did not originally belong, and ought not now to be recognized as belonging, to all *raiya*s in Bengal except those whose occupation of the land is of a merely transitory nature. It is unnecessary now to enter upon the merits of that question, inasmuch as, after a full consideration of the position, it has been determined that the legislation to be undertaken by the Government shall proceed on the assumption that the occupancy-right is to be recognized as appertaining only to such tenants as may be shown to be in some special sense settled or permanent. But the problem of defining the class of tenants in whom such a right should be recognized is, when limited by this assumption, one of considerable difficulty.

29. The conditions requisite to confer the status of the "*khudkásht raiya*," so frequently referred to in our revenue enactments and records, may in earlier times, and especially when thoroughly organized village-communities prevailed, have been to a certain extent definite and ascertainable; but, in spite of all the learning and research which have been brought to bear, they are not now to be discovered. The probability is that they were always very vague; that, notwithstanding their vagueness, no difficulty arose so long as land was abundant, the pressure of the Government revenue heavy and the status of a privileged cultivator of little value; and that it was only with the progress of agriculture, the increase in the value of landed property and the consequent disputes regarding interests in land, that the need of some more precise definition came to be felt.

30. A definition framed under such circumstances would necessarily be to a great extent artificial, and in moulding its details there would necessarily be a good deal of room left for considerations of equity and expediency. We find accordingly, on referring to the proceedings connected with Act X of 1859, that those who framed that Act assumed a considerable latitude in settling the conditions on which the occupancy-status should be acquired. In the Bill

as read a first time, they proposed to confer on every "resident" raiyat a right of occupancy in the "land held by him," and they justified this on the ground that the word "khudkásht," as used in the Regulations, seemed to be synonymous with "resident"; but subsequently, it having been pointed out to them by the Revenue-authorities of the North-Western Provinces that "residence was not always a condition of occupancy," they adopted the rule embodied by them in the Act, namely, that twelve years' holding of the same land shall give a right of occupancy in that land. This rule, which was obviously to a large extent artificial, was copied by them from a similar rule which was issued by the North-Western Provinces Government, apparently as a mere executive suggestion to its officers, in the year 1836, as that "most consistent with the existing practice and recognized rights" in those provinces. The only feature common to the two rules is that of a raiyat in some sense permanent in, or settled in, the locality, and it would seem that the persons who framed those rules considered that as long as they maintained this feature, they were at liberty to define, in such manner as they might think equitable and expedient, the circumstances which should be taken to constitute the requisite degree of permanency or settlement. This is quite intelligible in the view above suggested, that, though the status of the khudkásht raiyat was still a recognized institution, the conditions requisite to establish it were so vague that they could not be described otherwise than as resting on a certain ill-defined degree of permanency in a particular locality.

31. Act X of 1859 is admitted to have done much towards improving the relations between landlord and tenant, but, in this particular matter of defining the conditions requisite to the establishment of a right of occupancy, it cannot be pronounced a success. It would be unjust to charge this want of success altogether against the Act itself. It has been held by the highest judicial authority that the provisions of the Act with respect to the establishment of the right of occupancy should be construed as cumulative and not as exhaustive or exclusive of all other modes of establishing that right; but, as a matter of fact, the Act has come to be regarded as a Code complete in itself, and as superseding all other modes of establishing the right. Its effect has consequently been to injure seriously the rights of the old established raiyats, by throwing upon them the burden of proving, not merely that they have held for twelve years in the village or estate, but further that they have so held in every one of the particular fields or plots, in respect of which they claim to have rights of occupancy, a burden which, it need hardly be said, it is impossible for them, in the absence of any trustworthy agricultural records, to discharge. And, as regards the acquisition of rights of occupancy by new comers,—a matter which is always regarded as absolutely necessary for the prosperity of the agriculturist class in this country,—it becomes almost impossible under a law which enables the landlord to prevent it by the simple device of shifting the tenant from one holding to another before the period of twelve years has run out.

32. It is unnecessary to state here the various remedies which have been proposed for these evils. They will be found described and discussed in paragraph 61 of the letter of the Government of India to the Secretary of State, No. 6, dated 4th March, 1882. It is enough to state the amendment of the law which the Government, after a very full discussion of the question, has resolved to propose. That amendment follows with certain modifications a suggestion of the Famine Commissioners, and consists in making the acquisition of the status of the khudkásht raiyat, or, as he is termed in the Bill, the "settled raiyat," depend not on the holding of one and the same plot of land for twelve years, but (section 45) on the holding of any raiyatí land (whether the same or not it does not matter) in the same village or estate for a period of twelve years whether before or after the passing of the Act. The raiyat may, by ceasing for one year to hold land as a raiyat in the village or estate (section 46), lose the status so acquired, but while it continues to adhere to him, he will, notwithstanding any contract to the contrary, be deemed to have acquired a right of occupancy in any raiyatí land held by him as a raiyat in the village or estate after the 2nd March, 1883, the date on which it is proposed to introduce the Bill. It should be added that, in order to obviate the effect which the minute partitions of estates, so common of late in certain parts of the country, would have in reducing the area in respect of which a settled raiyat of an estate would enjoy his status as such, it is in effect provided by section 43 that the estate shall, for the purposes of this portion of the Act, be taken to be the estate as it would have existed if no partition had taken place since the 1st of January, 1853.

33. It will be observed from the above that a right of occupancy is acquired by a settled raiyat holding raiyatí land "*no withstanding any contract to the contrary.*" It is considered essential to carry the enactment to this extent. As observed by the Government of India in paragraph 85 of their letter No. 6 of the 21st March, 1882, "such is the power of the zamíndárs, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements which, if history, custom and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed, and in this conclusion we have the support not only of the Bengal Government but also of the almost unanimous opinions of the Bengal officers."

34. These provisions apply only to raiyatí land. The acquisition of a right of occupancy in the landlord's khamar land is, by section 49, kept on the same footing as under the existing law

35. It is only necessary to add, as regards the acquisition of the right, that it is provided by section 44 of the Bill that every raiyat, who immediately before the commencement of the Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when the Act comes into force, become an occupancy-raiyat of that land for the purposes of the Act, and that (section 48) a right of occupancy may be acquired by a grant from the landlord.

36. As regards the probable effect of the new provisions regarding the acquisition of the right of occupancy, it should be stated that no great increase of the area at present subject to that right is looked for from them; indeed, if the statement which has been made by a high authority, that 90 per cent. of the raiyats in Bengal already have that right, is correct, any such increase would scarcely be possible; but what is hoped for is, first, that a stop may be put to the vigorous efforts, which are at present being made by landlords in some parts of the country, to withdraw land from the operation of the right by preventing the natural growth of a fresh occupancy-right in the place of an old right which has determined; and secondly, that, where occupancy-rights do as a matter of fact exist, the proof of their existence may be a matter of less difficulty than it is at present to the ignorant and helpless raiyat.

37. Section 50 states in general terms the more important incidents of the occupancy-right. They attach to the tenancy notwithstanding any contract between the landlord and raiyat, and are briefly as follows:—

- (1) the raiyat may use the land in any manner which does not render it unfit for the purposes of the tenancy;
- (2) he may make improvements on it as provided by the Bill;
- (3) he must pay rent at fair and equitable rates as determined by the Bill;
- (4) he cannot be ejected except under a decree passed for breach of certain conditions, or for using the land in such a way as to render it unfit for the purposes of the tenancy;
- (5) he may sublet the land;
- (6) his interest is to be transferable subject to certain rights reserved to the landlord; and
- (7) his interest is to descend as if it were land.

38. Several of these incidents will be referred to at greater length in connection with the portions of the Bill specially relating to them. The sixth falls to be considered here, inasmuch as most of the remaining sections of the chapter are occupied with the rules regulating the rights reserved to the landlord when an occupancy-holding is transferred by sale, mortgage, gift or bequest.

The question whether the right of occupancy should be made by express enactment freely transferable everywhere, as it is at present held to be by custom throughout a very large portion of the area to which the Bill applies, has been most fully and carefully considered. It has to be looked at from two points of view, namely, first, from the point of view of the landlord, and secondly, in the interests of the tenant.

39. From the former point of view the question presents comparatively little difficulty. The landlord is concerned only to see that we do not allow an objectionable tenant to be forced on him against his will, and this we can readily guard against by giving him a right of pre-emption, or something equivalent thereto, in every case of transfer. It has accordingly been provided that, in cases of voluntary sale, gift or bequest, the landlord shall have a right to purchase at a price to be fixed by the Civil Court; that in the case of a sale in execution of a decree, when the landlord and any other person bid the same amount, the landlord shall have the right of pre-emption; and that, when an order is passed for foreclosing a mortgage of an occupancy-right, the landlord shall be allowed an opportunity of paying in the amount of the mortgage-debt and taking the place of the mortgagee. The only doubt that has been felt about these provisions is whether, in the case of a voluntary sale, the landlord should not be required, if he exercised his right of pre-emption, to pay the price at which the raiyat has actually agreed to sell the occupancy-right instead of a price to be fixed by the Court; but, on considering the difficulties, by which the right of pre-emption would be clogged in cases of collusion between the vendor and purchaser, and in cases in which a spiteful neighbour might be willing to pay an exorbitant sum for an occupancy-right with a view to harassing the landlord, it has been thought best to put the case of voluntary sale on the same footing as those of gift and bequest.

40. Looking at the question of transferability next from the point of view of the occupancy-raiyat's interest, the Local Government and the Government of India have come to the conclusion that, in the absence of evidence of any evil consequences which have already followed from such transfers, or which may be anticipated as likely to occur in the near future, it would be unwise to oppose the growth of the very strong tendency towards transferability, which the prevailing customs show to exist in rights of this class in almost all parts of the country.

The existence of such a tendency indicates—what, indeed, is clear from other evidence—that those most concerned regard the quality of transferability as an important incident of the right; and it cannot be doubted that the enactment of a law absolutely forbidding transfer would, even if it saved existing customs, be regarded as a hardship. It may be added that, if the custom of transferability is so widely established as is stated by some very competent authorities, the operation of a law of this sort would be so limited as to be of but little importance.

41. That the powers of transferring and sub-letting which the Bill recognizes may in time lead to a state of things, in which the great bulk of the actual cultivators would be not occupancy-raiyats but under-raiyats with but little protection from the law, is indeed within the range of possibility; but, if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it. There is nothing in the present Bill which ought in any way to hamper them in doing so—nothing to affect the principle that, in an agricultural country like India, the great mass of the actual cultivators of the soil whoever they may be, and however they may have come into the possession of the land, must be protected by the law.

42. The only other provision of Chapter V which appears to call for notice here is that contained in section 56, and is to the effect that, where a landlord, by way of pre-emption under the foregoing sections or otherwise, acquires an occupancy-right in his own land, any tenant, who subsequently takes the land from him, shall have a right of occupancy in it, and if the rent of the land was previously payable in money, shall be entitled to hold it at a money-rent to be fixed under the Act. There is nothing in the Bill to prevent a landlord, so acquiring an occupancy-right in land, from keeping the land in his own hands and cultivating it by his servants or by hired labourers. All the section would enact is that, if he chooses to let it to a tenant, that tenant shall at once acquire an occupancy-right. This seems necessary in order to guard against the possibility of a landlord buying up on a great scale the occupancy-rights existing on his estate or tenure with a view to locating ordinary raiyats on the land. To a landlord, who buys an occupancy-right, as contemplated by the pre-emption sections of the Bill, merely with a view to excluding an intending purchaser whom he objects to have as his tenant, there would be no appreciable hardship in the restriction.

CHAPTER VI.—*Of the Rent payable by Occupancy-raiyats.*

43. Chapter VI is devoted to the important subject of the rents payable by occupancy-raiyats. In regard to this particular matter, as in regard to that of the acquisition of the right of occupancy, Act X of 1859, whether owing to its inherent defects or to the peculiar construction put upon it by the Courts it is unnecessary now to enquire, has not proved a success. Leaving out of consideration the matter of additions to the rent of a holding on account of an increase of its area, a matter which is relegated to a completely separate division of the present Bill, Act X of 1859 provided by its 17th section that the rent payable by an occupancy-raiyat should be liable to enhancement only where—

1st—its rate was below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent, or

2nd—the value of the produce or the productive powers of the land had been increased otherwise than by the agency or at the expense of the raiyat.

44. Having thus stated the cases in which the rent was to be liable to enhancement, the Act stopped, giving no indication, except such as might be gathered from the statement of those cases, as to the extent to which the Courts were to enhance the rent. In the first of the two cases, no difficulty would arise from this, as the intention of the Act in respect of that case was clear enough; but in the second of the two cases, the question as to the limit of enhancement gave rise to an important discussion, which was at length brought to a close in what is known as “the great rent case.” The rule laid down in that case is commonly spoken of as “the rule of proportion,” and is to the effect that the enhanced rent should bear to the previous rent the same ratio as the increased value of the produce or increased productive power bears to the value or productive power at the time the previous rent was fixed.

45. This rule, whatever may be said for it on theoretical grounds, has proved to be absolutely unworkable by the Courts in practice, inasmuch as it throws on them the necessity of undertaking elaborate and laborious inquiries into economical questions, with which they are altogether incompetent to deal, and which have reference not merely to the present time but also to past and possibly very remote times, for which no such evidence as could be acted on by a Court of justice is likely to be forthcoming. Moreover, it necessitates enquiries, which are of such a nature that they could with advantage be undertaken only generally, on a great scale, and once for all, being, instead of this, undertaken over and over again in a most imperfect and unsatisfactory manner in individual cases.

46. The result of this is that, though the right of the landlord to enhance is distinctly recognized by the law, and though definite rules are laid down for its enforcement, the law has become to a great extent a dead letter.

The most important object of the chapter we are now considering is, while guarding and limiting the right to enhance in certain respects, which will be presently noticed, to put it on such a footing that it will be readily enforceable in practice; and the chief means adopted for attaining this object is that of separating off the statistical and economical inquiries of a general nature, which have just been referred to, and providing for their being undertaken once for all on a large scale by Revenue-officers.

47. Passing from these preliminary observations to the details of Chapter VI of the Bill, it will be seen that section 60 provides that, except on account of an addition to the area of the holding by alluvion or otherwise, a money-rent payable by an occupancy-tenant shall not be enhanced except by a decree of a Civil Court under the Bill, or by a contract of the nature described in the foregoing section.

48. It is considered, for reasons similar to those stated above in paragraph 33, that it would be destructive of the objects of the Bill if occupancy-raiyats were left perfectly free to deprive themselves by their contracts of the right to hold at fair and equitable rates secured to them by the law. But, on the other hand, absolutely to prevent such contracts would, it is thought, involve too great an interference with the freedom of the parties. A middle course has accordingly been adopted in section 59, which provides that a money-rent payable by an occupancy-raiyat may be enhanced by a contract in writing, approved of and registered by a Revenue-officer appointed by the Local Government in this behalf, and which goes on in its second subsection to enact that a Revenue-officer shall not approve or register such a contract until he has satisfied himself that it is fair and equitable, and that he shall be absolutely debarred from registering any contract, by which a raiyat engages to pay a rent more than six annas in the rupee higher than the existing rent, or more than one-fifth* of the estimated annual value of the gross produce of the land.

49. This 59th section, which, it will be remembered, relates only to the enhancement of the rents of existing tenancies, is supplemented in section 61 by a somewhat similar provision applicable to cases in which a settled raiyat comes in as a new tenant on land previously held by another tenant at a money-rent. Here, too, it is considered that the objects of the law might be defeated if the parties were left absolutely free to contract; and it is accordingly provided that a settled raiyat, taking land under the circumstances referred to, shall not be bound to pay for it a higher rent than that paid by the previous tenant, unless that higher rent has been fixed by a contract registered and approved as already described.

50. Turning now to the matter of enhancement by a decree of the Civil Court, the subdivisions of Chapter VI which are marked B and C proceed on the assumption that there are, at least in some parts of the country, certain rates of rent generally recognized as the rates payable by occupancy-tenants for the various classes of land held by them. Where this is so, it would, it is presumed, be not very difficult for a Revenue-officer to ascertain those rates, and then, starting from them as a basis, and taking into account such changes in the productive powers of the soil and in the prices of produce as may have occurred since they were fixed, to prepare tables of the enhanced rates, which, subject to allowance in exceptional cases, might fairly and equitably be demanded by the landlord for each class of land under the existing conditions. The Revenue officer, it is thought, might further show in his tables the average gross produce of each class of land and its estimated value. Supposing this to be done, the Civil Courts would be relieved almost entirely of those economical and statistical enquiries, which at present are involved in enhancement-suits. They would accept the rates and produce-statistics shown in the tables as *prima facie* correct for lands of the classes to which the tables referred, and might restrict themselves to considering the comparatively simple and limited questions as to whether the particular lands in question in the suit belonged to the class alleged, and whether there were any exceptional circumstances connected with them which would require the rent to be fixed at a different rate from that set down in the table.

51. It is, of course, well understood that there would be many parts of the country for which, owing to the non-existence of recognized rates of rent or to the great varieties of the soil, such tables could be prepared, and further that, even where it is possible to prepare such tables, their preparation must be a work of time. With a view to these considerations, the Bill has been so drawn as to provide, first, in sub-division B of Chapter VI, for suits to enhance money-rents where a table of rates has been prepared, and secondly, in sub-division C, for such suits where a table of rates has not been prepared.

52. It will be convenient, in explaining the details of these portions of the Bill, to begin with the latter set of provisions. The cases, in which a suit may be brought to enhance the money-

* See as to this limitation, para. 54 *infra*.

rent of an occupancy-holding situated in a tract, for which a table of rates has not been prepared, are stated in section 74. They will be found to be in the main the same as those provided for in the section of Act X of 1859 referred to in paragraph 43, the only difference of sufficient importance to call for notice here being, that, for the purpose of estimating the increase in the productive powers of the land or in prices, on which a right to enhance depends, the Court is not compelled, as under the present law, to look to the time at which the rent was fixed, but, when that time cannot be ascertained (as it frequently cannot), or when the productive power and the prices prevailing at that time are undiscoverable, may take, for the purposes of comparison, any other time which may appear to it fair and equitable.

53. Section 75, supplying the defect in Act X of 1859 referred to above (paragraph 44), fixes the limits up to which the Court is to enhance in cases, in which the enhancement is claimed on the ground of an increase in the productive powers of the land or of prices. It provides that, if the increase has been effected wholly by the agency or at the expense of the landlord, he shall be entitled to the whole benefit of it; that, if it has been effected partly by the agency or at the expense of the landlord and partly by the agency or at the expense of the tenant, the benefit shall be divided between them in such shares as, having regard to all the circumstances of the case, the Court thinks fair and equitable; and that, if it is not proved that the increase has been effected by the agency or at the expense either of the landlord or of the tenant, each of them shall be entitled to one-half the benefit: provided in this last case that the enhanced rent shall not bear to the previous rent a higher proportion than the increased productive powers or increased prices bear to the former productive powers or former prices, as the case may be. Thus the rule of proportion, instead of being, as it is at present, under the decision in the "great rent case," the measure of enhancement in all cases, will merely supply a maximum limit in one of the three cases dealt with by section 75; and, as it is not apprehended that landlords will often seek to press their rights of enhancement to the full extent, it seems unlikely that it will give rise to any considerable difficulty.

54. The only other rule relating to the limit of enhancement contained in section 75 is the concluding provision, that the enhanced rent shall not in any case exceed one-fifth of the estimated average annual value of the gross produce of the land in staple crops calculated at the price at which raiyats sell at harvest-time. This limit has been substituted for that of one-fourth originally proposed, as the present Lieutenant-Governor of Bengal considers that one-fourth of the value of the average crop would be too high a limit. It is to be understood, however, that the point is still under the consideration of the Government.

55. Coming next to the scheme for enhancement by means of a table of rates, it will be seen that section 62 empowers the Local Government to direct a Revenue-officer to prepare for any local area, with the aid of assessors, a table showing, for each class of land comprised in that area, the rate of rent fairly and equitably payable by occupancy-raiyats, the average gross produce of the land, and the average value of that produce. The land is to be classified (section 63 (a)) according to the nature of the soil, situation, means of irrigation and other like considerations, and section 64 enacts that, in fixing the rates for each class, regard is to be had—

- (a) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time the table is prepared;
- (b) to the value of the average gross produce of land of that class, and the cost of raising that produce, about the time those rates were fixed, or, where these matters cannot be ascertained for that time, about such other time as it may be fair and equitable to take for the purpose of comparison;
- (c) to the value of the average gross produce and the cost of raising that produce at the time the table is prepared; and
- (d) to the following rule, namely, that, where the rate of rent for any class of land is raised on account of an increase in the value of the produce, the new rate shall not bear to the old rate a higher proportion than the increased value of the produce bears to the former value.

The section concludes with a proviso, corresponding to that mentioned above in connection with section 75, limiting the enhanced rate of rent fixed for land of any class to one-fifth of the average gross produce of land of that class.

56. Sections 65 to 69 provide for a preliminary publication in the vernacular language of the table prepared by the Revenue-officer; for the consideration of objections urged against it by those interested; for the submission to the higher Revenue authorities, and by them to the Government, of the table, with a report setting forth the grounds of the Revenue-officer's decision on each point, and of all objections preferred; and for the further publication of the table when finally settled and approved of.

A table prepared under these provisions will remain in force for such period, not less

than ten years or more than thirty years, as the Local Government may direct, and while it remains in force it will (section 71) be conclusive evidence—

(a) that, except as provided by certain clauses to be presently referred to, the rates shown in it for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies; and

(b) that the statistics of gross produce and value given in the table are correct.

58. Section 72 empowers the Local Government to charge the expenses connected with the preparation of a table for any local area to the raiyats and their landlords in that local area in such proportions as it thinks fit.

59. Section 73 contains the rules for the guidance of a Court in suits instituted to enhance the rent of an occupancy-raiyat in a local area, for which a table of rates has been prepared, and a glance at it will show what an important simplification of the work of the Court will be effected by the table. The general rule is that the Court shall enhance up to the rate shown in the table for the class of land in question, or, where maximum and minimum rates are shown for land of that class (as will occasionally be the case) to such rate, not higher than the maximum or lower than the minimum, as it thinks fit. It is only in certain exceptional cases that the Court will be required to go behind the rates. Those exceptional cases are of two classes.

60. The first class comprises cases, which may be described with sufficient accuracy for our present purpose as cases in which, owing to some improvement having been effected or having taken place in reference to the land since the commencement of the tenancy, the land has been raised from a lower to a higher class of the table. The rules laid down for cases of this class by the first clause of the proviso to section 73 closely follow the corresponding rules laid down in section 75 and referred to above, paragraph 53. They are to the effect that, if the improvement has been effected solely by the agency or at the expense of the raiyat, the rent shall be fixed as if the land belonged to the lower class; that if the improvement has been effected partly by the agency or at the expense of the landlord, and partly by the agency or at the expense of the raiyat, the rent shall be fixed at such rate intermediate between that of the higher class and that of the lower class as the Court, having regard to all the circumstances of the case, thinks fair and equitable; and that, if it is not proved that the improvement has been effected by the agency or at the expense either of the landlord or of the raiyat, the rent shall be fixed at a rate half-way between the rate of the higher and that of the lower class.

The effect of these rules will be best seen from the illustrations appended to section 73 of the Bill, which are as follows:—

Illustrations.

(a) The rates shown in the table for land of a certain description are—

When the land is irrigated from a well	Rs. 4 per acre.
When the land is not so irrigated	„ 2 „

The holdings of A, B, C and D, occupancy-raiyats, are composed of land of that description irrigated from wells constructed on these holdings respectively.

The well on A's holding is an ancient one, existing from a time anterior to the tenancy: that on B's holding has been constructed by the landlord since the commencement of the tenancy: that on C's holding has been constructed by the raiyat: that on D's holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A and B must be fixed at Rs. 4 per acre, that of C's holding at Rs. 2 per acre, that of D's holding at such rate intermediate between Rs. 2 and Rs. 4 as the Court thinks fair and equitable.

(b) The rates shown in the table for land of a certain description are as follows:—

When such land is irrigated from a branch of a river	Rs. 4 per acre.
When such land is not so irrigated	„ 2 „

The holdings of E and F, occupancy-raiyats, are composed of land of that description, and were not irrigable until 40 years ago, when, owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E has been in occupation of his holding 50 years, F only 30; the rent of E's holding must be fixed at Rs. 3, that of F's holding at Rs. 4.

61. The other class of exceptional cases in which the Court will have to go behind the rates is that referred to in the second clause of the proviso to section 73, where the raiyat proves that by contract, or by custom, or on some equitable ground, he is entitled to hold at a rate lower than that fixed by the table for land of the class to which his land belongs; and in cases of this class, the Court is required to fix the rent at the lower rate at which the raiyat proves that he is entitled to hold.

62. To complete this portion of the subject it is only necessary to add that all suits for enhancement, whether under a table of rates or otherwise, are by sections 76 to 78 of the Bill made subject to the three rules already referred to under the head of tenures, namely, that a rent shall not be enhanced so as to be more than double the previous rent; that the Court may

order the enhancement to take effect by degrees for any number of years not exceeding five; and that, when rent has been enhanced, it shall not be again enhanced for 10 years.

63. How far it will be possible to give effect to the provisions of this chapter regarding the preparation of a table of rates it would be difficult to predict. The members of the Rent Law Commission entertained hopes of those provisions being largely used, and they appear to have thought that, in some cases, if the rates were once settled by authority, landlords and tenants would soon be able to adjust their differences. On the other hand, the result of recent inquiries would seem to show that, in some parts of the country, the rates vary so much from holding to holding as to render the preparation of a table impossible or practically useless. It must, however, be pointed out that it will not follow that, because a table of rates has not been, or cannot be, prepared for a local area, the landlords of that area will necessarily be reduced to the ordinary procedure by civil suit. They will, in many cases, be able to invoke the aid of a revenue-officer for the settlement of their rents under the provisions of Chapter XI, which will be noticed in their proper place.

64. Section 79 contains the provisions relating to the reduction of money-rents payable by occupancy-tenants. The cases, in which a claim for reduction is allowed are, with certain modifications in detail, which it is unnecessary to notice here, the same as under the existing law, that is to say, a reduction can be claimed only where there has been a decrease of productive power or of prices; and such cases are so rare that it has been thought unnecessary to lay down any elaborate rules for their treatment. Section 79 therefore simply provides that, when a case for reduction is made out, the Court may direct such reduction as it thinks fair and equitable.

65. The case of rents payable for pasture lands, which is provided for in section 80, is likewise one of no great practical importance, inasmuch as such lands are but rarely let to a tenant in this country. Accordingly, no provision for the reduction of rent has here been considered necessary, and it has been thought sufficient, as regards enhancement, to provide that a suit to enhance may be instituted on the ground that the rent is below the prevailing rate paid by raiyats of the same class for similar lands in the vicinity, or that, having regard to the increase of rent on arable land in the vicinity, an enhancement would be reasonable. In either of these cases, the Court is empowered to fix the rent at such rate as it thinks fair and equitable.

66. The next sub-division of the chapter relates to rents payable in kind or varying with the crop, and is of greater importance. Section 81 provides that, when the rent is of this nature, the following rules shall apply, namely:—

- (a) notwithstanding any contract or custom to the contrary, the landlord shall not be entitled to recover, in respect of any portion of the holding on which staple crops (such as rice, wheat, and so forth) are grown, more than half the gross produce or its value; and
- (b) the landlord shall not, except under a contract in writing, be entitled to recover, in respect of any portion of the holding, on which other crops are grown, any other description or any greater amount of rent than a sum equal to one-half of the estimated average value of the produce of that portion of the holding, supposing staple crops to be grown on it.

67. The only objection which it is apprehended might be taken to these provisions is that in some cases a landlord, whose rent is payable in kind, contributes in the shape of seed, labour or otherwise, towards the production of the crop, recovering the price of his assistance in the form of an additional rent, and that, in such cases, the limits which it is proposed to fix might be too low. To meet this, a sub-section has been added, providing that nothing in the section shall prevent a landlord recovering from the tenant the value of assistance so rendered. The result accordingly will be that, though the landlord can no longer include the value of such assistance in the rent, where, by so doing, he would bring the rent above the prescribed limit, he can recover the same amount under another name.

68. Section 82 provides for the commutation into fixed money-rents of rents payable in kind or consisting of the value of a certain share of the actual gross produce.

It provides that an occupancy-raiyat, paying such a rent may, notwithstanding any contract to the contrary, sue to have his rent commuted, and that the Court shall fix the money-rent at its discretion either—

- (a) according to the prevailing money-rent payable by raiyats of the same class for similar land in the vicinity, or
- (b) according to the average value of the rent actually received by the landlord during the preceding five years, subject, however, in this latter case, to a deduction of such

amount as the Court thinks reasonable, in consideration of the whole risk of cultivation being taken by the raiyat.

69. The remaining provisions of Chapter VI are merely of a supplementary or subsidiary nature. Section 83 provides for the preparation of price-lists, which, when published with the sanction of the Board of Revenue, will be deemed to be conclusive evidence in proceedings under Chapter VI, and will thus save the Courts a certain amount of work, for the performance of which they are but ill-suited.

Section 84 empowers the Board to make rules for the guidance of officers and (as regards certain matters) of Courts acting under Chapter VI, in particular for determining what crops are to be deemed staple crops for the purposes of the chapter.

CHAPTER VII.—*Of the Right of a settled Raiyat in Bastu Land.*

70. The Bill prepared by the Rent Commission contained elaborate provisions regarding the use of land for building purposes, which were justified at length in paragraphs 108—113 of their Report. It is unnecessary here to discuss those provisions on their merits. It is enough to say that the present measure is strictly confined to the amendment of the law regarding agricultural tenancies, and can properly deal with the holding of land for building purposes only where the holding of such land is in some sense ancillary to an agricultural tenancy, as *e.g.*, where an occupancy-raiyat has built himself a house in a village with a view to living near his agricultural holding. In such a case there is so close a connection between his house and his agricultural holding that it would in many cases be vain to protect him in the possession of the holding without, at the same time, protecting him in the possession of the house. Besides the inconvenience he might be put to in being ejected from his house and compelled to reside at a distance from his work, it is clear that, if he were left at the landlord's mercy as regards the house, he would be liable at any time to have pressure brought upon him in regard to the holding also, which he might be unable to resist.

71. When the site of the house is included in an occupancy-holding, the raiyat is sufficiently protected under Chapters V and VI, but, when it is a separate holding, some special provision seems necessary; and it is thought that the requirements of the case will be best met by enacting that every settled raiyat of a village or estate shall, notwithstanding any contract to the contrary, have a permanent heritable and transferable right in any *bastu* or other homestead land in that village or estate which is held by him as the site of a dwelling-house for himself and his family; that a person having such a right shall not be ejected except under a decree of the Civil Court for breach of a condition; that, if so ejected, he shall be entitled to compensation; and that his rent may be enhanced at intervals of ten years, so that it may be equal to the rent paid for similar lands in the neighbourhood, or, at the option of the landlord, so that it may be equal to five per centum of the market-value of the land.

CHAPTER VIII.—*Of Ordinary Raiyats.*

72. Chapter VIII deals with ordinary raiyats, that is to say (section 88) raiyats holding raiyat land but not having a right of occupancy in respect of it. The principle on which this chapter is based is that, while it is desirable to interfere as little as possible between tenants of this class and their landlords, they should not be exposed to arbitrary rack-renting and eviction at the hands of their landlords, and, further, that the acquisition by them of the status of settled raiyat should in every reasonable way be promoted.

73. Section 89 accordingly provides that, subject to a certain maximum fixed for the rents of all raiyats and under-raiyats, which will be presently referred to, an ordinary raiyat shall pay such rent as may from time to time be fixed by agreement between him and his landlord; but, in order to check extravagant enhancements by the landlord, it is provided in the following sections that, if the landlord proposes an enhancement of the rent, to which the raiyat does not agree, the landlord shall not eject him without paying him, besides any amount that may be due to him as compensation for improvements under the provisions of the Bill, a further sum, by way of compensation for disturbance, equal to a certain multiple of the yearly increase of rent demanded. Ten times the increase is the amount provided for in the Bill as it stands; but it need hardly be said that a figure of this sort is, at this stage of a Bill, entered only tentatively and subject to future consideration. The object in view, it will be understood, is to fix a multiple of the increase high enough to deter the landlord from making an extravagant demand, but not so high that the raiyat would be induced by the prospect of obtaining it to refuse to accede to a reasonable enhancement.

74. The details of the procedure requisite to give effect to this important provision occupy the greater part of the chapter, but they are not such as to call for notice here. The only other provision of the chapter to which it seems necessary to refer is the rule in section 90

limiting the landlord's right to eject, and which is to the effect that a landlord shall not eject an ordinary raiyat except—

- (a) for arrears of rent;
- (b) on the ground that the raiyat has used the land in a manner, which renders it unfit for the purposes of the tenancy, or that he has broken some condition, on breach of which he is, under the terms of a written contract, liable to be ejected; or
- (c) that he has refused to agree to an enhancement of rent on which the landlord insists.

It is in this last case that the provision as to compensation for disturbance will apply.

CHAPTER IX.—*Provisions regarding Rent applicable to several classes of Tenants.*

75. We now pass from the chapters dealing with particular classes of tenants to those dealing with matters common to several classes. Chapter IX, which is the first of these, contains most of the general provisions of the Bill regarding rent. It begins with a section (96) providing for such additions to, and deductions from, the rents of tenure-holders and occupancy-tenants as are made on account of an alteration in the area of the holding by alluvion or diluvion, by encroachment, eviction by title paramount to that of the landlord, and so forth. This section applies, in the case of a tenure-holder, only in the absence of a contract to the contrary, but, in the case of an occupancy-raiyat, it overrides any such contract.

76. In the case of land being added to the area of a holding, it provides that the amount added to the rent shall be calculated on the rates payable by occupancy-raiyats for land of a similar description, less a deduction, in the case of a tenure-holder, of thirty per cent. for profits, risk and cost of collection. This seems to be the fairest rule to apply in such a case, and it is, moreover, as observed by the Government of Bengal, in harmony with the law regulating additions to the Government revenue in alluvion cases.

77. On the other hand, in the case of a loss of a portion of an area, for the whole of which a single rent has been payable, the only equitable principle to adopt seems to be that the abatement from the rent should bear to the rent previously payable the same proportion as the yearly value of the land lost bears to the yearly value of the holding prior to the loss, and this is what sub-section (3) of section 96 enacts, adding, however, that, when the yearly value of the land lost cannot be satisfactorily proved, the abatement shall bear to the previous rent the same proportion as the area lost bears to the area of the holding prior to the loss.

78. Sections 97 to 99 give power to the Board of Revenue to fix the instalments in which rents are to be paid. The power is of little importance in the case of tenures, inasmuch as it can be exercised in respect of them only in the absence of any agreement or custom regulating the matter. In the case of raiyats' holdings, however, it is of considerable importance. Much of the harassment, to which the raiyats are subjected, is said to arise from the number of instalments in which their rents are payable, and, to remedy this, the Board is empowered, subject to certain reservations regarding agreements entered into and customs prevailing before the commencement of the Act, to fix the instalments, in which the rents of raiyats are to be payable, so that there may not be more than four in each year.

79. Section 100 requires every landlord to give to a tenant paying him rent a receipt, containing much fuller details than those prescribed by the existing law, and to keep a counterpart of every receipt so given. It also provides that, when a receipt does not contain the requisite particulars, it shall be deemed to be an acquittance in full up to date.

Section 101 requires every landlord to furnish to his tenant, for each agricultural year, a detailed statement of the account between them for that year, and to keep a counterpart of every statement so furnished.

Section 102, following the existing law regarding receipts, imposes penal damages for refusal or neglect to give receipts or furnish accounts, and further makes it an offence punishable with a fine, not exceeding fifty rupees, to neglect to keep a counterpart as required by the preceding sections.

It is believed that, if these provisions are fully enforced, much advantage will result to both parties. Not only will the tenants be supplied with proper evidence of the payments made by them and of the state of their accounts, but the landlords, if they keep their counterpart statements in a proper manner, will find them useful as evidence before the Courts.

80. Under the existing law, there is but one case, in which a tenant can deposit his rent in a public office, so that the deposit may operate as a payment to his landlord, namely, when he is prepared to declare solemnly that he has tendered the rent to his landlord, and that the landlord has refused to receive it.

It has been found that this declaration has become a mere form, and it is thought better to allow the tenant to deposit his rent whenever he has reason to believe that the landlord will not receive it and grant a receipt. It is also thought advisable that a tenant should be allowed to deposit his rent in two other cases, namely :—

- (1) when it is payable to co-sharers jointly, and he is unable to obtain their joint receipt, and no person has been empowered to receive the rent on their behalf; and
- (2) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent.

81. This extension of the right to deposit rent necessitates our conferring on the officer empowered to receive deposits a certain discretion not allowed by the present law. He is accordingly given by section 104 a discretion to refuse the deposit, if he does not think the circumstances of the case warrant its being made, and he is further given by section 106 a discretion to pay away the deposit, if he thinks fit, to such one of several rival claimants as may seem to be entitled to it, but subject, of course, to the right of any person actually entitled to it to recover the amount from the person, to whom it is so paid. As regards this last point, however, it will be seen that the officer will have power to retain the deposit if he thinks fit, pending the decision of the Civil Court as to the person entitled to it; and this latter course is doubtless that which he would adopt in all cases in which there might be any reasonable doubt as to the person entitled.

82. The provisions, contained in sections 112 to 116, for the division or appraisement of a crop by a public officer in cases, where the rent is paid in kind or is the value of a certain share of the gross produce, and a dispute arises between the parties, are based on the proposals made for Bihâr by the Bihâr Committee and the Rent Law Commission; but they are made generally applicable, and their details are taken, for the most part, from enactments in force in Upper India, where rent is very commonly paid in kind or in appraisement of the crops. They enact that, if either party neglects to attend at the proper time for making the division or appraisement, or if there is a dispute regarding the division or appraisement, the Collector may, on application made to him, issue a commission to such person as he thinks fit, directing him to divide or appraise the crop, and may further direct him to associate with himself any other persons as assessors for this purpose. If, in a division made in this way, either party receives less than his proper share, he may, within three months from the date of the division, sue the other party to recover the value of the additional portion of the crop due to him, and, if he does not so sue, the division will be deemed to have been rightly made. When the case is one of appraisement, the commissioner is required to submit his appraisement in writing to the Collector, who shall, after such hearing and enquiry as he thinks necessary, pass an order either confirming or varying it, and that order will be final.

It will be seen that these provisions proceed upon the principle, already referred to in connection with the subject of enhancement, of entrusting to the Revenue authorities the duty of inquiring into, and adjusting, matters, which they are presumably more competent to deal with than the Civil Courts. It is, it will be observed, only the mechanical act of division and the mere framing of the estimate of the crops that, in the cases now in question, are to be entrusted to the Collector and the persons appointed by him, all questions of right being reserved for the Civil Court.

83. Section 117 provides that, if the landlord of any land, of which the rent is payable by division or appraisement of the crop, or any other person, interferes in any way, without the tenant's consent, with the cutting or harvesting of a crop, except by an application to the Collector, under the provisions just referred to, he shall be deemed to have committed criminal trespass within the meaning of the Penal Code. This is considered necessary in order to put a stop to the oppressive action of landlords in certain parts of the country, who are found to assume a power to prevent the cutting or harvesting of the crops, and to use it as an engine of extortion against their tenants.

84. Section 118, which applies only to Bihâr, provides that all *danabandi* papers shall, within 15 days after the making of an appraisement, be filed in the Collector's office.

85. Section 119 provides that, notwithstanding any contract made after the 2nd March, 1883, the date on which it is proposed to introduce the Bill, a raiyat or under-raiyat shall not, in any case, be bound to pay a money-rent exceeding five-sixteenths of the estimated gross produce of his holding. The limit originally proposed was thirty-five per cent. It has now been lowered at the suggestion of the Lieutenant-Governor; but the figures must be regarded as merely provisional and subject to reconsideration.

86. Section 120 in effect enacts that contracts fixing rents shall, in temporarily-settled tracts hold good only until a fresh settlement is made. The reasons for this provision are similar to those stated above (paragraph 21) in connection with section 20.

87. Section 124 makes the rent of a transferable holding the first charge on that holding.

CHAPTER X.—*Other provisions applicable to several classes of Tenants.*

88. The question as to the right of a raiyat to make improvements, and to claim compensation therefor on ejection will, if the proposal to make occupancy-rights freely saleable in execution

of a decree is adopted, be of less importance in Bengal than in some other parts of British India. The great mass of the raiyats having a right of occupancy, and not being liable to be ejected except under peculiar circumstances of rare occurrence, and the question of compensation adjusting itself when an occupancy-right is sold in execution of a decree, claims for compensation for improvements will be comparatively few. But the importance, from an economical point of view, of encouraging improvements is so great in this country, that special provision has been made for the matter to meet the case of ordinary raiyats, and such cases as may, from time to time, occur of occupancy-raiyats being ejected from their holdings.

The principle on which the sections of the Bill relating to this subject proceed is that that party to a tenancy whose interest in the land preponderates should have the preferential right to improve and take the full benefit of his improvements; but that, if the party having this preferential right is unable or unwilling to avail himself of it, it should be open to the other party to make an improvement and reap the benefit of it.

Section 127 accordingly confers upon an occupancy-raiyat the preferential right to improve, and provides (subject to one exception to be presently noticed) that, if he does not avail himself of this right and the landlord desires to have any improvement made, he may call upon the raiyat to make it, and that, if the raiyat does not within a reasonable time comply with the request, the landlord may make the improvement himself. Section 128 enacts what may be termed the inverse of these provisions for the case of the ordinary raiyat, that is to say, it gives the preferential right to the landlord, and allows the raiyat to improve only if the landlord, upon being requested by the raiyat to make an improvement, neglects to do so within a reasonable time.

89. There is however, as has been intimated, an exception made to these rules in the case of one sort of improvement, namely, a dwelling-house for the raiyat and his family. This, it is considered, is an improvement which every raiyat, an ordinary as well as an occupancy-raiyat, should be entitled to make; and it is further considered that it is not an improvement, which a landlord should be empowered to force on a raiyat against his will. As regards this improvement, accordingly, it is provided simply that any raiyat may make it; no right to make it, whether preferential or otherwise, being conferred on the landlord.

90. When a landlord makes an improvement under these sections, he will be entitled to reap the full benefit of it in the shape of an enhancement of the rent under the provisions of the Bill relating to that subject. When a raiyat makes an improvement under these sections, he will, if ejected, be entitled, under section 129 of the Bill, subject to certain exceptions which it is unnecessary to notice here, to receive compensation for it. An occupancy-raiyat will further, while he continues to hold, reap the full benefit of his improvements, inasmuch as his rent cannot, under Chapter VI, be enhanced on account of an improvement made by him. An ordinary raiyat under similar circumstances may possibly not be able, in all cases, to retain the full benefit of his improvements, but the check placed on the landlord by the provisions of Chapter VIII will, as a rule, amply protect him in the enjoyment of that benefit.

91. The only other provisions of the Bill, relating to improvements, which seem to call for notice here, are the last clause of section 129, which enacts that improvements made by a raiyat before the commencement of the Act shall be deemed to have been made in accordance with the Act (and therefore to give a claim to compensation), unless it is shown that the landlord forbade the raiyat to make them and was ready to make them himself, and section 132, which makes void all stipulations in contracts providing (a) that a landlord may prevent a raiyat from improving or eject him for improving, or (b) that a raiyat when ejected shall not be entitled to compensation for improvements.

92. In section 133, providing for the landlord's right to measure lands comprised within an estate or tenure the rents of which are payable to him, the existing law has been modified so as to give a landlord the right to measure all lands lying within the estate or tenure, whether rent-paying or not. As observed by the Government of Bengal, "a landlord has at present no right to measure *lâkhirâj*, and a rent-free holder may, in virtue of a valid grant of ten *bighás*, be holding double as much or more. The mere measuring by the landlord cannot harm him, as he could not be ousted from possession save through the Civil Court. But the landlord seems entitled to make a complete survey of his estate." (*Letter from Government of Bengal, No. 849T, dated 27th July, 1881, page 25.*)

93. The proviso to section 133 enacts that, when land has been measured under that section, it shall not again be measured for ten years without the written permission of the Collector. This seems but reasonable, a right to measure once in ten years being sufficient in all ordinary cases.

94. The only other provisions of this sub-division of the chapter, which deviate in any material respect from the existing law, are those of sections 137 and 138, relating to the standards of measurement. They adhere so closely to the corresponding provisions of the Bill prepared by the Rent Law Commission that the following extract from the Commission's Report (para. 140) will best explain them:—

"The length of the local standard pole, with which a measurement of land should be made, is a fertile subject of dispute and litigation. It is not uncommon for a land-

lord to make a measurement of his lands with a pole of his own selection, the actual length of which must be a subject of doubt upon the evidence, while the raiyats concerned aver not only that the standard pole of the pargana is different, but that during the measurement a third pole has occasionally been substituted for that which the landlord claims to be the standard. In order to remedy these difficulties as far as possible, we have enacted that all measurements made by order of the Civil Court or Collector shall be made according to the Government measure of 14,400 square feet to one standard bighá. If it be shown that the rights of the parties to the suit are regulated by any different local measure depending upon a pargana standard pole, the Government measure shall be converted into local measure for the purposes of the suit. In case of dispute as to the standard pole, the Collector shall, in any suit before himself, or in any suit before a Civil Court, on a reference made for this purpose by such Court, determine the proper length of such pole. We have followed the present law, as settled by the decisions, in enacting that an appeal shall lie from the Collector's decision to the District Judge, but that, if no such appeal be preferred, the decision of the Collector shall be final."

95. It is stated in Mr. Field's digest, section 12 (4), as the result of decided cases, that a raiyat's interest in the land determines when he ceases to cultivate the land and leaves the neighbourhood without arranging for the payment of the rent. Mr. Field observes that the cases leave the matter thus indefinite, and that, if the proposition is adopted by the legislature, it should be made more precise. Section 140 of the Bill, following this suggestion, provides that, when a tenant of a non-transferable holding leaves the holding uncultivated and the rent of it unpaid for a period of one year, he shall be deemed to have surrendered, except in cases in which, owing to an inundation or any other accident to the land beyond his control, it may have been impossible for him to cultivate.

96. Section 141, relating to the doctrine of merger, follows the corresponding provisions (sections 43 and 44) of the Bill prepared by the Rent Commissioners, who state in their Report that some such enactment is needed to settle the law in Bengal. It provides, subject to certain exceptions and qualifications which it is unnecessary to specify here, that, when, in the case of any tenancy, the interest of the landlord and that of the tenant become by transfer, succession or otherwise united in the same person, so as to be owned by him in the same right, the interest of the tenant shall, during the three months following, be presumed to be merged in that of the landlord, unless the person shows that he has not intended it to be so, and shall, after the expiration of the three months, be conclusively deemed to be so merged, unless, within the three months, the person has executed an instrument declaring his intention that a merger should not take place, and the instrument has been registered and published in a certain prescribed manner.

97. Sections 142 to 148, relating to the appointment of a manager on behalf of co-owners of an estate or tenure, are taken, with slight alterations in the drafting, from the Bill framed by the Rent Law Commission. Their history and the nature of the provisions they contain will be best seen by an extract from the Commission's report. After describing at some length (paragraph 134) the complications, litigation and even riots which arise when co-owners of an estate or tenure (or, as they are sometimes termed, coparceners) quarrel among themselves, and the grievous harassment, to which the tenants are exposed, in such cases, the report proceeds as follows:—

"135. The necessity of a remedy for this state of things was felt at an early period of British administration, and in 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the Revenue-authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Courts of Judicature, it shall be competent to the Zila Judges to appoint a person duly qualified and under proper security to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the representation of the Revenue-authorities, or of any such person as aforesaid, to remove any manager so appointed (*ib.*, section 27). A subsequent Regulation (V of 1827) enacted that, when the Zilla Court thought it just and proper under the provision of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector, directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

"136. Such being the present state of the law, a majority of us have thought that this fragment might well be repealed and a complete set of effective provisions substituted

therefor. We have accordingly enacted that, when coparceners, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued, or is likely to ensue, (a) inconvenience to the public, (b) injury to private rights, the District Judge may, upon the application in case (a) of the Collector, and in case (b) of any one having an interest in such estate, tenure or under-tenure, direct a notice to be served upon the coparceners, calling upon them to show cause why they should not appoint a common manager. If the coparceners do not, within a month, show cause why they should not appoint a common manager, the District Judge may direct them to do so. If they fail to obey that direction, the District Judge may either appoint a manager, or direct that the estate, tenure or under-tenure be managed by the Court of Wards, if it is willing to undertake the charge. We have thought it advisable to give the coparceners an opportunity of appointing a manager of their own selecting, before the District Judge proceeds virtually to depose them. When the Court of Wards undertakes the charge, it will govern itself by the provisions of the *Court of Wards Act*, IX (B.C.) of 1879. It is discretionary with the Court of Wards to undertake the charge or not. A majority of us have thought it advisable to render this system of management possible, as there may be cases in which no other management will be available. Mr. O'Kinealy doubts if it is advisable to extend the exceptional jurisdiction of the Court of Wards and empower it to manage the estates of persons who happen to disagree amongst themselves. When the District Judge appoints a manager, he is empowered to settle his remuneration, and the manner of it, whether, that is to say, by a fixed salary or a percentage of the collections. He is also empowered to require reasonable security for the proper discharge of the duties of the office. The manager is authorized to exercise the same powers as the coparceners jointly might, but for his appointment, have exercised. He is required to keep regular accounts and to allow the coparceners to inspect and take copies of them. He may be removed upon the application of the Collector, or of any person interested in the estate, tenure or under-tenure. The District Judge may at any time direct that the management be restored to the coparceners, if he is satisfied that they will conduct it without inconvenience to the public or injury to private rights."

98. The only other section in this chapter which calls for notice is section 149, which enacts that no tenant shall be ejected from his holding except in execution of a decree.

CHAPTER XI.—*Of the Settlement of Rents by a Revenue-officer.*

99. It has been stated, in the remarks above made on Chapter VI, that it is apprehended that, in many parts of the country, the framing of a table of rates will be impossible. It should be added that, in many instances, the mere framing of a table of rates will not suffice to settle the disputes between landlords and tenants. In either case the only satisfactory remedy may be a settlement of individual rents by a Revenue-officer, conducted somewhat in the same manner as in a Government estate at present; and it is with a view to providing such a remedy that Chapter XI has been framed.

100. There is, however, one cardinal difference between the provisions of this chapter and those of the existing settlement law which should be noted at the outset. Under the existing settlement law, when a Settlement-officer has, after the most careful and protracted inquiry, settled the rents of an estate, and his proceedings have been scrutinized and checked by the superior Revenue-authorities, every individual rent fixed by him is liable to be called in question in the Civil Courts, and that not merely on the ground of error in respect of some matter, such as the status of a tenant or the validity of an alleged lease, falling most appropriately within the cognizance of a Civil Court, but also on the ground of an error in regard to the quality of the soil, the estimated amount of the produce, or some other such matter with which the Revenue-authorities, conducting their inquiries on a great scale, are far more competent to deal than any Civil Court trying a suit relating to a single holding can possibly be; in other words, an important portion of the work, after being done by those authorities, who are most competent to perform it, is liable to be pulled to pieces by another set of authorities, who are far less competent to perform it. The enormous amount of unnecessary expense, trouble and vexation, which this system entails on all concerned can be estimated from the fact, stated by the Board of Revenue in referring to a recent settlement, that out of 2,391 decisions in suits brought to contest the Settlement-officer's rates, 2,202 were absolutely adverse to the plaintiffs. An attempt has been made to avoid this in Chapter XI of the Bill by distinguishing, among the various questions which may arise in a settlement of rents, those which the Revenue-authorities are most competent to determine, and those which a Civil Court is most competent to determine, making the decision of the Revenue-authorities final on the former, and providing that the latter may ultimately be brought for decision before the Civil Court.

101. The procedure of this chapter, besides being available for the purpose of Government settlements, may be made applicable by the Local Government—

- (a) when a large proportion of the tenants or of the landlords desires that it should be applied, and

- (b) when a resort to it is likely to settle or avert a serious dispute, existing or likely to arise, between landlords and tenants generally.

It is applicable to tenants of any class, but would probably be made use of chiefly for settling the rents of occupancy-tenants.

102. When the rents to be settled are rents, which are subject to alteration by order of a Court, they will be *fixed* according to the principles embodied in the Bill, and so that they shall not exceed the maximum prescribed by the Bill in cases of enhancement. When, on the contrary, the rents are not of this description, they will be merely ascertained and recorded as rents are under Regulation VII of 1822.

103. The Revenue-officer, having settled the rents, will prepare a jamabandi, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has been fixed or ascertained, and the amount of the rent fixed or ascertained. This jamabandi will be published, and, after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth the grounds, on which the Revenue-officer has proceeded. If ultimately sanctioned by the Local Government, it will be again published, and will then continue in force for 10 years.

104. While it remains in force it will be conclusive (except as will be presently explained) as to the rents payable by those tenants, whose rents are shown in it as fixed. As regards rents shown in it merely as ascertained, and as regards all other matters contained in it, it will be merely presumed to be correct until the contrary is proved.

105. It will be observed that, in thus empowering a Revenue-officer to fix rents so as to bind the parties, we necessarily empower him to decide certain questions (as, *e. g.*, that of the status of a tenant) which more properly appertain to the jurisdiction of the Civil Courts and ought not to be finally decided by any other authority. It is not, however, intended that the Revenue-officer should finally decide such questions. He may, if he thinks fit, when such a question arises, abstain altogether from deciding it, and, under section 155, refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

In most cases, he would probably decide the question on such evidence as might be readily available; but, whenever he takes this course, his decision will be liable to be challenged in a Civil Court under section 160, which provides that nothing contained in it shall prevent the rent fixed being called in question on the ground—

- (a) that the tenancy does not exist, or that the tenant is not liable to pay rent, or
- (b) that the tenant belongs to a class different from that to which he is shown in the jamabandi to belong, or
- (c) that the land comprised in the tenancy is different from, or more or less than, that shown in the jamabandi, or
- (d) that a rent different from that shown in the jamabandi has been fixed by contract.

It is believed that the above list exhausts all the matters, in regard to which a Civil Court may be regarded as a better tribunal than the Revenue-authorities, and, if this is so, the determinations of the Revenue-authorities in regard to all other matters may safely be made final and conclusive.

106. It only remains to add that, by section 163, the Local Government is empowered to charge the expenses of all proceedings, other than Government settlements, under this chapter to the landlords and tenants concerned, in such shares as it thinks fit.

CHAPTER XII.—*Of the Preparation of a Record-of-rights by a Revenue-officer.*

107. The provisions of Chapter XII are somewhat similar to those of Chapter XI, and have been introduced into the Bill with a similar object, but are more limited in their scope, inasmuch as the operations to be undertaken under them do not, like those under Chapter XI, embrace the *fixing* of rents, but are confined to the ascertaining and recording of existing rights and existing rates of rent. Moreover, as existing rights and existing rates of rent are matters the determination of which properly belongs to the Civil Courts, an entry in the record-of-rights prepared by a Revenue-officer under this chapter, is in every case merely to be presumed to be true until the contrary is proved.

108. The only other points calling for notice under this chapter are, first, that the Local Government may apply its provisions not only in the cases, in which it is empowered to apply those of Chapter XI, but also in any other case, in which the Governor General in Council may sanction their being applied, and secondly, that the provisions of this chapter being considered a sufficient substitute for those contained in Act VIII (B. C.) of 1869, sections 38-40, these latter are not reproduced in the present Bill.

CHAPTER XIII.—*Of the Recovery of Rents from Raiyats and Under-raiyats by distraining the produce of the Holding.*

109. This chapter may be said to be the result of a compromise. The Rent Commission, concurring with the Bihár Rent Committee, proposed to abolish the existing law of distraint as an offset of English law, of which the efficacy was impaired by the legislation of 1859, and which had been abused in Bihár and not always applied in a regular manner in other parts of the country. To this strong objections were urged, and the procedure provided by this chapter was then devised by the Government of Bengal, as being likely to secure to the landlords most of the advantages afforded by the existing law, without exposing their tenants to the evils now complained of.

110. The modified power of distraint, which it is now proposed to allow, can be used by any landlord of a raiyat or under-raiyat for the recovery of an arrear of rent, which has not been due for more than a year. It extends, as a rule, to all the produce of the holding, including what may have been grown by, and be the property of, a sub-lessee of the tenant, and it may be exercised though the produce has been stored, provided it has not passed out of the possession of the cultivator. The landlord cannot himself interfere with the produce to be distrained, but must apply to a Civil Court to distrain it. The Court, after a brief examination of the case, will depute an officer to distrain and sell the produce, and nothing will stay the sale except the payment into court of the amount of the demand. Any sum paid into court will be retained for one month, with a view to the possibility of the owner of the distrained property claiming compensation as for a wrongful distraint, and on the expiration of that period it will be paid to the landlord.

111. Sections 185 and 186 are directed against illegal distraint and interference with crops. Section 185 provides, in effect, that any person who, otherwise than in accordance with the provisions of the Bill, or some other enactment for the time being in force, distrains any produce of a tenant's holding, or interferes with the harvesting of a crop, shall be deemed to have committed criminal trespass within the meaning of the Penal Code; and section 186 imposes a penalty which may extend to three months' imprisonment, or two hundred rupees fine, upon any person who benefits by, or is interested in, the commission of an offence under section 185 if, having reason to believe that the offence was likely to be committed, he has not used all lawful means in his power to prevent its commission.

112. Section 187 empowers the Local Government to suspend in any local area, for such time as it thinks proper, the sections which entitle a landlord to distrain.

CHAPTER XIV.—*Special rules of procedure applicable to Suits between Landlord and Tenant.*

113. Sections 191 to 198 are intended to embody all those modifications of the ordinary procedure proposed by the Rent Commission and the Government of Bengal, which seem likely to expedite, in any material way, the disposal of suits between landlords and tenants.

Sections 191 to 197 apply to—

- (a) suits for recovery of rent;
- (b) suits for penalties claimable under any provision of the Bill; and
- (c) suits to recover possession of land.

They provide that, in such suits, the summons shall, as a rule, be issued for the final disposal of the case; that the summons may be served by a registered letter; that no written statement shall be filed without the leave of the Court; that the provisions of the Code of Civil Procedure relating to interrogatories, discovery and affidavits shall not apply; that, whether an appeal lies or not, a simple memorandum of the substance of the evidence, such as is prescribed by the Code for unappealable cases, shall suffice; that, as a rule, execution may issue on the oral application of the decreeholder at the time the decree is passed; and that section 305 of the Code, which enables a judgment-debtor to obtain a suspension of an order made for the sale of his immoveable property, and sections 320 to 325C, which provide for the transfer of decrees to the Collector for execution, shall not apply.

114. A further simplification of the procedure is effected in suits for arrears of rent and for penalties (involving no question of title or of a right to enhance or vary rent) by taking away (section 198) the appeal in such cases from—

- (a) a decree or order passed by a District Judge, Additional Judge or Subordinate Judge, where the amount claimed does not exceed Rs. 100; and
- (b) a decree or order passed by any other judicial officer specially empowered by the Local Government, where the amount claimed does not exceed Rs. 50.

In so far as regards the class of cases marked (a), the Bill merely reproduces the existing law, with this difference, that it extends the rule to decrees and orders of Subordinate Judges, who, it is thought, may now safely be entrusted with final jurisdiction in cases of this class.

The extension of the provision to the class of cases marked (b) is based on a proposal of the Rent Law Commissioners supported by the Local Government. The Rent Commissioners would have fixed the limit of value in such cases at Rs. 10, but the Lieutenant-Governor, who must be regarded as the best judge of the qualifications of his officers, has recommended that it should be raised to Rs. 50, the limit fixed by the present Bill.

115. It will be observed that the final jurisdiction in this class of cases will be exercised only by specially selected officers, and that a power of revision is reserved to the District Judge by the proviso to the section.

116. Section 199 is completely new. It is intended for the benefit of a landlord in a suit for an arrear of rent, when, as sometimes happens, the defendant admits that the arrear is due, but pleads that it is due not to the plaintiff but to some rival claimant. In such a case, it seems only reasonable that the tenant should pay the amount of the rent into court; and the Bill accordingly provides that the Court shall refuse to take cognizance of his plea unless he does so.

117. It is hoped that, when the measure comes to be fully discussed, other expedients for simplifying the procedure in rent-suits may be discovered, but, with the exception of those above referred to, none have hitherto been suggested which the Government of India would be prepared to accept. As regards the possibility of devising any effectual procedure analogous to that on negotiable instruments under Chapter XXXIX of the Code of Civil Procedure, or any other form of summary or provisional remedy, the whole history of such remedies both in this country and elsewhere is against it.

A summary form of procedure can scarcely help a plaintiff unless his case is of the simplest description, admitting of being answered only in the simplest way, and he comes into court armed with documentary evidence of so reliable a character that the presumption against any defence being possible is extremely strong. In such cases the Court may very properly, and with great advantage to the plaintiff, be empowered to decline to hear the defendant, and to decide against him summarily and provisionally, unless he pays the amount of the claim into court or gives security for it. But what advantage could be hoped for from a procedure of this description in rent-suits in Bengal, which admit of the most varied and complicated defences, in which the evidence on both sides is usually of the most worthless character, and charges of forgery and perjury almost common forms in the pleadings? If the legislature consented to provide such a procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would gain nothing by adopting it; and, even if such safeguards were dispensed with in the Act, the Courts would naturally be so cautious about refusing leave to defend or requiring security from a penniless raiyat, that the so-called summary remedy would cease to be summary, and, like the summary suits of former days in some parts of India, become as lengthy and complicated as an ordinary suit, with the further disadvantage of not being final.

118. The truth would seem to be that facilities for recovering rents in Bengal should be sought for, not so much in novel forms of procedure as in a reliable record of tenancies and their incidents, and a simple mode of adjusting rents; in other words, by going to the root of the disputes which, though they may not always come to the surface, are believed to underlie a very large proportion of the contested rent-suits. If this view is correct, the provisions of the Bill regarding the preparation of tables of rates, settlement of rents and framing of records-of-rights, and those regarding receipts and accounts, may reasonably be expected to remove most of the difficulties of which the landlords now complain.

119. Section 200, following the Bill proposed by the Rent Law Commission, enacts that an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interest in the land has become vested in that assignee.

120. Section 202, relating to relief against forfeitures, is based on section 14 of the Conveyancing and Law of Property Act, 1881. It enacts that a suit for ejectment of a tenant, on the ground of his having forfeited his interest by breach of a condition, or the like, shall not be entertained unless the landlord has given the tenant an opportunity of paying compensation and remedying the breach when it admits of remedy, and that, when a decree is passed in such a suit, it shall not be executed until the defendant is allowed a similar opportunity of repairing or atoning for his wrongful act.

121. The Rent Law Commissioners observe that "there are in the existing law no provisions regarding the away-going crop, and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation." Sections 203 and 204 of the Bill have been framed to meet such cases. They provide, in effect, that it shall be in the option of the landlord to purchase the crop from the raiyat at a valuation, or to allow him to retain possession of the land at a reasonable rent till he gathers the crop. Similarly, when the raiyat has prepared the land for sowing before the date on which he is ejected, section 203 provides that he shall be entitled to receive from the landlord the esti-

mated value of the labour and capital expended by him in preparing the land, together with reasonable interest on the same. These sections are, however, guarded by a proviso that a raiyat shall have no claim under them when, after the commencement of the ejectment-proceedings, he has cultivated or prepared the land contrary to local usage.

122. Sections 205 and 206 require the Court in all suits and proceedings for ejectment to inquire into and adjust all claims between the landlord and the tenant. This provision will, it is believed, be found useful as tending to prevent a multiplicity of suits.

123. The origin and object of section 207, which provides for the institution of suits to determine the status of a tenant or the incidents of a tenancy, will be best explained by an extract from the report of the Rent Commissioners. After referring to the provisions of the existing law regarding suits for pattás and kabuliyats, they thus continue:—

“We have just observed that very little use has been made of these provisions by those for whose benefit they were intended. This observation was more particularly concerned with their use as a means of reducing to writing the conditions regulating the relation of landlord and tenant. There is, however, another purpose for which they might have been used, that is, as a means to obtain an authoritative settlement of some essential question connected with the tenancy and in dispute between the parties thereto; the rate of rent, for example, or the quantity of land held by the tenant. The landlord may contend that the raiyat holds twenty bighás of land, while the raiyat declares that he has but fifteen. Year after year the contention is renewed. The landlord threatens a measurement, which the raiyat, afraid of a venal *amín* and a varying pole, desires to avoid. A bribe to the *gomáshda*, or compliance with some petty cess, defers the final settlement of the question for a year: and the following year it arises again, perhaps deterring the raiyat from going to his landlord's *kachahré* to pay his rent, lest he should be subjected to a demand, the justice of which he will not admit. Or, some fields in the raiyat's holding are by him maintained to be second class rice-land and assessable with the prevailing or usual rate for land of this class, whilst the landlord avers that they are first class rice-land and should pay a higher rent. At every rent-day the point is discussed; and in a country where any discussion is prone to beget a wrangle, seldom conducted with a seemly choice of expressions, an amount of irritation is kept up, which is not in harmony with the friendly relations which should exist between a landlord and his tenantry. It is very desirable that facility be afforded for the ready settlement of questions like these, which are constantly arising in this country, more specially in consequence of the absence of boundaries and fences, and the want of an exact survey upon an uniform standard. It might have been thought that the landlord in the first case could easily have the questions settled by tendering a pattá and demanding a kabuliyat for twenty bighás; and the landlord, in the second case, by tendering a pattá and demanding a kabuliyat for the field, as first class rice-land: but if the land turned out to be nineteen and a half bighás instead of twenty, or one of the fields was found to be of some middle class kind of land, the suit, according to the decision of the highest tribunal in India, must fail, and the parties be sent away, the real question in dispute unsettled, and their feelings roused and embittered by litigation.”

“Thus these provisions of the existing law have become ineffectual for the only purpose for which the people cared to use them, and for which they might have been beneficially used. While omitting what has been found useless in practice, we have endeavoured to supply the want thus indicated by experience. Section 151 of the draft Bill accordingly allows either landlord or tenant to sue for the determination of any such questions which may arise between them. A copy of the decree passed in the case will have all the effect of a pattá or kabuliyat upon the point which the parties themselves wish to have determined.”

CHAPTER XV.—*Sale of transferable Holdings in execution of Decrees for Arrears due on them.*

124. The provisions of this chapter are made applicable to all transferable holdings, including such tenures as are transferable, occupancy-holdings, and bastu holdings under Chapter VII, and involve, in certain other respects, substantive changes in the existing law.

The most important of those changes will be best explained in the words of the Rent Commissioners, with whom it originated:—

“The object,” they say, “of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent is, that the superior landlord's security for his rent may not be impaired. If the sub-leases and incumbrances of a tenure have not absorbed so much of the tenure-holder's profits as to render the interest left him insufficient to meet the rent which he pays to the proprietor of whom he holds his tenure; if the tenure, subject to these sub-leases and incumbrances will sell for a sum sufficient to satisfy any decree that can be passed for arrears of the rent payable by the tenure-holder, it cannot be said that the proprietor-landlord's security for his rent has been impaired so far as to bring the case within the above object. The right of sub-letting and creating incumbrances belongs to every tenure-holder: such is the common law

of the country. So long as the landlord is certain of the rent to which he is entitled, he cannot justly complain of the exercise of this right, or claim to interfere with it. When, however, the exercise of the right extends so far as to endanger the landlord's rent, to impair the security for such rent afforded by the sale of the tenure by public auction, the case is altered, and the landlord may reasonably demand that these sub-leases and incumbrances be avoided, which have rendered the remaining interest of the tenure-holder an insufficient security for the rent payable by him.

"In this view of the matter, we have enacted that a tenure, under-tenure or occupancy-holding, about to be sold in execution of a decree for arrears of its own rent, shall first be put up to auction subject to certain incumbrances, and, if the sum bid is sufficient to liquidate the amount of the decree and costs, shall be sold subject to such incumbrances. If the highest amount bid is not sufficient to liquidate the decree, the decree-holder, that is, the landlord, may then claim to have the tenure, &c., sold free of incumbrances. Such sale is not to be had immediately, but upon a subsequent sale-day not less than fifteen or more than thirty days afterwards; and a notification of such tenure being about to be offered for sale free of incumbrances must be posted upon some conspicuous place upon the land of the tenure. The effect of these provisions will be that persons who hold sub-leases and incumbrances will not be endamaged if the bidding on the first sale-day reaches an amount sufficient to satisfy the decree and the tenure is in consequence sold subject to incumbrances. If, on the other hand, the bidding on the first sale-day does not reach an amount sufficient to satisfy the decree, such persons will have time to protect themselves from injury by paying in the amount of the decree (which they can subsequently recover from the defaulter), and so preventing such a sale of the tenure as will avoid incumbrances."

125. Among the objections to the scheme thus propounded by the Commissioners was one to the effect that it was unsuited to the case of occupancy-holdings. This objection is admitted by Mr. Reynolds and by the Government of Bengal to be as a rule well-founded, inasmuch as an ordinary-occupancy-holding is not likely to be saddled with incumbrances which should be respected at a sale. It appears, however, that there are, in some parts of the country, occupancy-holdings of large extent, the land of which is sub-let on such terms that the interest of the lessee is of considerable value. Under these circumstances, the proper course appears to be that proposed by the Government of Bengal, namely, that occupancy-holdings should as a rule be sold at once with power to annul all incumbrances, but that the Local Government should have power to direct that the occupancy-holdings in any local area should be in the first instance put up subject to incumbrances as if they were tenures; and it is on these lines that the present Bill is drawn.

126. The general outline of the chapter will be clear from what has been said, but there are certain details of sufficient importance to call for further explanation. In the first place, it should be stated that the word "incumbrance" is used throughout in a special sense. When it is said that a holding will be sold "free of incumbrances," or as the Bill puts it, "with power to avoid incumbrances," it is not meant that it will be discharged free of everything that might in the wide sense of the word be termed an "incumbrance."

The following interests, which might be termed incumbrances, will not be affected by any sale under this chapter:—

- (a) a tenure existing from the time of the permanent settlement;
- (b) a tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) a tenure of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;
- (d) a right of occupancy;
- (e) a right conferred on an occupancy-tenant to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and
- (f) any right or interest which the landlord has expressly and in writing given the tenant permission to create.

The last three of these are protected in similar sales under the existing law, and the first three have been added, because such interests, being protected under a sale for arrears of revenue, would seem to be *à fortiori* entitled to protection under a sale for rent.

127. Again, when the Commissioners propose that the holding shall be put up in the first instance subject to incumbrances, they do not mean that it should be sold subject to all incumbrances, but only to such incumbrances as have been created by a registered instrument of which a copy has been served on the landlord. This limitation they considered necessary to prevent sham incumbrances being fraudulently set up after the sale.

128. The Bill has been drawn in accordance with these views, and accordingly, if it becomes law, the result will be—

- (a) that the interests referred to in paragraph 126 will be protected in the case of all sales;
- (b) that, in the case of sales subject to encumbrances, the protection will extend also to incumbrances created by registered instruments of which a copy has been served on the landlord; and
- (c) that, except as stated in (a) and (b), the holding will be sold with power to avoid all liens, sub-tenancies, easements and other rights or interests created upon it by the tenant in limitation of his own interest.

129. An incumbrance will not become void *ipso facto* on a sale under this chapter. It must be annulled by a notice served on the incumbrancer through the Collector within one year after the purchaser first has knowledge of the incumbrance. It may be added that it is proposed, by separate legislation, to apply a similar rule to the case of sales for arrears of revenue.

130. When an order for the sale of a holding is passed under this chapter, nothing will stop the sale, unless the amount due is paid into court or the decree-holder acknowledges that his claim has been satisfied.

131. When any person, having in a holding advertized for sale under this chapter an interest which would be voidable upon the sale, pays into court the amount requisite to prevent the sale, he will, with a view to the recovery of his money, be placed by section 218 in the position of a mortgagee of the holding with a first charge and a right to possession. If he is an inferior tenant of the holding, he will have a further remedy under section 219 which entitles him to deduct the amount from his rent.

132. The only other provision of this chapter which need be mentioned is section 220, which permits the decree-holder to bid at the sale without the permission of the Court, and precludes the judgment-debtor from bidding.

CHAPTER XVI.—*Limitation.*

133. The only provision of this chapter calling for notice is section 225, under which disability will not be recognised as affecting the running of limitation in suits for the recovery of rent. This is in accordance with the recommendation of the Rent Law Commissioners.

“We think,” they say, “that a minor ought not to be competent on coming of age to sue a raiyat for rent, which had accumulated during the whole period of his minority; that this kind of debt, which a poor man usually discharges year by year out of the produce of the year, ought not to be allowed to accumulate; and that, if the manager of a minor’s estate neglects his duty of realizing rents as they fall due, the minor’s remedy ought to be in an action for damages against such manager.”

C. P. ILBERT.

The 2nd March, 1883.

D. FITZPATRICK,

Secy. to the Govt. of India.



The Gazette of India

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 10, 1883.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd March, 1883:—

No. 5 OF 1883.

THE BENGAL TENANCY BILL, 1883.

CONTENTS.

CHAPTER I. PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
Local extent.
2. Repeal.
3. Construction of Act.
4. Saving of custom, special law, &c.

CHAPTER II.

OF THE DISTINCTION BETWEEN KHÁMÁR AND RAIYATÍ LAND.

5. Khámár land defined.
6. All other land to be raiyatí.
7. Power to order survey and register of khámár lands.
8. Mode of making survey.
9. Publication of register.
10. Appeals.
11. Submission of register to Board of Revenue and Local Government.
12. Approval of register.
13. Consequence of notification of approval.

CHAPTER III.

OF TENURE-HOLDERS GENERALLY.

- A.—Of the Right to hold at fixed rents.
14. Land held at rent unchanged since Permanent Settlement not liable to enhancement.

SECTIONS.

15. Presumption from twenty years' holding at unchanged rent.
16. Application of sections 14 and 15 when rent is paid in kind.
17. Effect of separation or amalgamation of holding.
18. Tenure held since Permanent Settlement liable to enhancement only in certain cases.
19. Saving as to land held under terminable agreement.
20. Saving as to land held in a district not permanently settled.

B.—Of the enhancement of rent.

21. Limits of enhancement of rent of tenures.
22. Enhanced rent not to be more than double the previous rent.
23. Power to order gradual enhancement.
24. Rent once enhanced may not be altered for ten years.

C.—Incidents of permanent tenures.

25. Incidents of permanent tenures generally.
26. Permanent tenure-holder not liable to ejection.

D.—Of the registration of transfers of, and succession to, permanent tenures.

27. Landlord bound to register voluntary transfer or succession on application.
28. Application may be served through Revenue-officer.
29. Registration in case of transfer by sale in execution of decree other than decree for rent.
30. Registration in case of transfer by sale in execution of decree for rent or by summary sale.
31. Effect of omission to register voluntary transfer.
32. Application to Court to compel landlord to register.
33. Application by landlord to compel registration.
34. Landlord to give copies of entries in the register.
35. Power to make rules regarding registration.

SECTIONS.

CHAPTER IV.

OF PATNÍ TENURES.

36. Definition of patnÍ tenure.
37. Incidents of patnÍ tenures.
38. Right of landlord of patnÍ tenure to demand security from transferee.
39. Landlord may refuse registration of voluntary transfer when security is not given.
40. Landlord may attach tenure sold in execution or by summary sale when security is not given.
41. Application to Civil Court, if security tendered is refused.
42. Recovery of arrears by summary sale.

CHAPTER V.

OF OCCUPANCY-RAIYATS.

43. Interpretation.
44. Present occupancy-raiyats to become occupancy-raiyats under Act.
45. Acquisition of status of settled raiyat of village or estate.
46. Loss of status of settled raiyat.
47. Settled raiyat to have occupancy-right in raiyatÍ land held by him in village or estate.
48. Acquisition of occupancy-right by grant.
49. Acquisition of occupancy-right in khámár land.
50. Incidents of occupancy-right generally.
51. Landlord's right of pre-emption on voluntary sale of occupancy-right.
52. Landlord's right of pre-emption on sale in execution.
53. Landlord's right to take the place of mortgagee on foreclosure.
54. Landlord's right to purchase in case of gift of occupancy-right.
55. Landlord's right to purchase where occupancy-right is bequeathed.
56. Raiyat of land of which landlord has acquired occupancy-right to be an occupancy-raiyat.
57. Acquisition of status of settled raiyat by succeeding to occupancy-right.

CHAPTER VI.

OF THE RENT PAYABLE BY OCCUPANCY-RAIYATS.

A.—Of money-rents generally.

58. Existing money-rents payable until altered as herein provided.
59. Enhancement of money-rents by contract.
60. Money-rents not enhanceable except as provided.
61. Limit of money-rent payable by settled raiyat taking new holding.

B.—Of the preparation of a table of rates and produce, and of suits to enhance money-rents where such a table is in force.

62. Power to direct preparation of table.
63. Contents of table.
64. Principle on which rent-rates are to be fixed.
65. Local publication of the table.
66. Revenue-officer to deal with objections.
67. Table to be submitted to superior Revenue-authorities.
68. Proceedings of Board of Revenue thereupon.
69. Publication of table after final sanction.
70. Period for which Table remains in force.

SECTIONS.

71. Table to be conclusive evidence.
72. Expenses incurred in preparing table how defrayed.
73. Suit to enhance where table is in force.

C.—Of suits to enhance money-rents where a table of rates and produce is not in force.

74. Grounds on which landlord may sue to enhance where table is not in force.
75. Rules for enhancement under section 74.

D.—Rules applicable to suits to enhance money-rents generally.

76. No enhancement beyond double the rent previously payable.
77. Power to order progressive enhancement.
78. Rent enhanced or commuted not enhanceable for 10 years.

E.—Of suits for the reduction of money-rents.

79. Occupancy-raiyat when entitled to reduction of rent.

F.—Special rules regarding money-rents payable for pasture-lands.

80. Special rules for pasture-lands.

G.—Of rents payable in kind or varying with the crop.

81. Limit to amount of rent payable in kind or varying with crop.
82. Commutation of rents.

H.—Supplementary provisions.

83. Collectors to prepare annual price lists of staple crops.
84. Power to make rules.

CHAPTER VII.

OF THE RIGHT OF A SETTLED RAIYAT IN BASTU LAND.

85. Settled raiyat to have permanent right in bastu land.
86. Provisions regarding ejectment.
87. Rule for enhancing the rent of land.

CHAPTER VIII.

OF ORDINARY RAIYATS.

88. Ordinary raiyat defined.
89. Rents regulated by agreement.
90. Grounds on which an ordinary raiyat may be ejected from raiyatÍ land.
91. Notice of enhancement to be served through Civil Court.
92. Raiyat may agree to enhancement. If he does not, landlord may sue to eject.
93. Procedure in suit.
94. Decree when absolute: when to become void.
95. Fresh proceedings not to be taken for ten years.

CHAPTER IX.

PROVISIONS REGARDING RENT APPLICABLE TO SEVERAL CLASSES OF TENANTS.

A.—Of alterations of rent consequent on alterations of the area of the holding of a tenant holder or occupancy-raiyat.

96. Additions to, and deductions from, rent respect of alteration of area.

SECTIONS.

B.—Instalments in which money-rents are payable by tenure-holders, raiyats and under-raiyats.

- 97. Rent of tenure-holder in what instalments and on what dates payable.
- 98. Rent of raiyat or under-raiyat in what instalments and on what dates payable.
- 99. Making and publication of orders under sections 97 and 98.

C.—Of the receipts and accounts to be given to tenants.

- 100. Tenant making payment to his landlord entitled to a receipt.
- 101. Tenant entitled to statement of account at close of the year.
- 102. Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts.

D.—Of the deposit of rent by a tenant in a public office.

- 103. Application to deposit rent in public office.
- 104. Receipt granted by public officer for rent deposited to be a valid acquittance.
- 105. Notification of receipt of deposit.
- 106. Deposit to whom payable.
- 107. Refund to depositor.

E.—Of arrears of rent.

- 108. Interest on arrears.
- 109. Power to award damages on rent withheld without reasonable cause.
- 110. Power to award damages to defendant improperly sued for rent.
- 111. Ejectment from non-transferable holding for arrears.

F.—Of rent taken by division or estimation of the crop.

- 112. Commission for dividing or estimating crops.
- 113. Appointment of assessors, &c.
- 114. Remedy for error in division.
- 115. Procedure when crop has been estimated or appraised.
- 116. Costs of proceedings under foregoing sections.
- 117. Interference with produce of land otherwise than under section 112, criminal trespass.
- 118. *Danabandi* or appraisal papers in Bihár to be deposited in Collector's office.

G.—Further provisions regarding rent.

- 119. Limit to rents of raiyats and under-raiyats.
- 120. Presumption that rent continues unchanged.
- 121. Power to alter rent in case of new assessment of revenue.
- 122. Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.
- 123. *Abwáb*, &c., illegal.
- 124. Penalty for exaction by landlord from tenant of sum in excess of the rent payable.
- 125. Rent first charge on tenures, occupancy-holdings and *bastu* holdings.

CHAPTER X.

OTHER PROVISIONS APPLICABLE TO SEVERAL CLASSES OF TENANTS.

A.—Of improvements on raiyats' holdings and compensation therefor.

- 126. "Improvement".
- 127. Right to make improvements in case of occupancy-holding.
- 128. Right to make improvements in case of ordinary raiyats' holding.
- 129. Compensation for improvements payable to raiyat on ejectment.

SECTIONS.

130. Power to make rules for appointment of assessors.

131. Principle on which compensation is to be estimated.

132. Certain stipulations in contracts to be void.

B.—Of the landlord's right to measure land.

133. Landlord entitled to measure land unless restrained by contract.

134. Tenant bound to point out boundaries.

135. Remedy when landlord is obstructed or tenant does not point out boundaries.

136. Presumption against tenant not attending to point out boundaries.

137. Measurement in suits between landlord and tenant to be made according to Government measure.

138. Determination of the length of the standard in case of dispute.

C.—Of surrender and abandonment.

139. Surrender by raiyat.

140. Non-transferable holding in certain cases to be deemed surrendered.

D.—Of Merger.

141. Merger of tenant's interest in landlord's interest.

E.—Of the appointment of a manager on behalf of co-owners of an estate or tenure.

142. Power to call upon co-owners to show cause why they should not appoint a common manager.

143. Power to order them to appoint a manager if cause is not shown.

144. Power to appoint manager if order is not obeyed.

145. Power to nominate person to act in all cases under section 144 (b).

146. The Court of Wards Act, 1879, applicable to management by Court of Wards under section 144 (a).

147. Provisions applicable to manager appointed under section 144 (b).

148. Power to restore management to co-owners.

F.—Miscellaneous.

149. No ejectment except in execution of decree.

150. Portion of holding not transferable

CHAPTER XI.

OF THE SETTLEMENT OF RENTS BY A REVENUE-OFFICER.

151. Power to order Revenue-officers to settle rents.

152. Bar to jurisdiction of Civil Courts while order is in force.

153. Rents of certain tenants to be fixed.

154. Rents of other tenants to be ascertained and recorded.

155. Power to refer question to Civil Court or leave case to be dealt with by Civil Court.

156. Preparation of *jamabandí*.

157. Publication of *jamabandí* and objections thereto.

158. Submission of *jamabandí* and petitions of objection to the Commissioner and Board.

159. Sanction to and final publication of *jamabandí*, and date from which it comes into force.

160. Rent fixed under foregoing provisions to be deemed the rent payable.

161. Rent ascertained under foregoing provisions to be presumed to be the rent payable.

162. Certain other entries in *jamabandí* to be presumed to be correct.

163. Expenses incurred in proceedings under this chapter how defrayed.

SECTIONS.

CHAPTER XII.

OF THE PREPARATION OF A RECORD-OF-RIGHTS BY
A REVENUE-OFFICER.

164. Power to order preparation of record-of-rights.
165. Presumption as to entries in record.

CHAPTER XIII.

OF THE RECOVERY OF RENTS FROM RAIYATS AND
UNDER-RAIYATS BY DISTRAINING THE
PRODUCE OF THE HOLDING.

166. Cases in which an application for distraint may be made.
167. Form of application and fee payable.
168. Procedure on receipt of application.
169. Procedure if application is admitted.
170. Service of demand and account.
171. Right to reap, &c., produce.
172. Sale-proclamation to be issued unless demand is satisfied.
173. Place of sale.
174. Power to sell produce before it is reaped or gathered.
175. Manner of sale.
176. Postponement of sale.
177. Payment of purchase-money.
178. Certificate to be given to purchaser.
179. Proceeds of sale how to be applied.
180. Certain officers may not purchase.
181. Procedure where demand is paid before the sale.
182. Amount paid by under-tenant for his lessor may be deducted from rent.
183. Conflict between rights of superior and inferior landlords.
184. Distraint of property which is under attachment.
185. Penalty for illegal distraint.
186. Persons benefitting, &c., by offences under section 185 liable to punishment.
187. Power to suspend provisions of sections 166 to 184.

CHAPTER XIV.

SPECIAL RULES OF PROCEDURE APPLICABLE TO
SUITS BETWEEN LANDLORD AND TENANT.A.—Rules applicable to suits between landlord and
tenant generally.

188. Place of suing.
189. Náibs or Gumáshias to be authorised agents.
190. Special register of suits.

B.—Rules applicable to particular classes of suits
between landlord and tenant

191. Sections 121 to 127, 129, 194 to 197, 305 and 320 to 325C of Code not to apply in suits for possession, rent or damages.
192. Particulars to be specified in plaint in such suits.
193. Summons in such suits to be for final disposal.
194. Service of summons in such suits by registered letter.
195. Written statements not to be filed in such suits without leave.
196. Mode of recording evidence in such suits.
197. Execution in such suits on oral application.
198. No appeal in certain suits for arrears and penalties.
199. Defendant in suit for arrear admitting arrear is due, but disputing plaintiff's title to pay into Court.
200. When assignee of decree for arrears may apply for execution.
201. Date from which decree for enhancement

SECTIONS.

202. Relief against forfeitures.
203. Rights of ejected raiyats in respect of crops and land prepared for sowing.
204. Payment by raiyat for occupation of land under section 203.
205. All claims between landlord and tenant to be determined in ejectment proceedings.
206. Procedure when, on ejectment, money is due by the landlord to the tenant.

C.—Suit to determine status, &c., of tenant.

207. Suit to determine status, &c., of tenant.

CHAPTER XV.

OF THE SALE OF TRANSFERABLE HOLDINGS IN EXECU-
TION OF DECREES FOR ARREARS DUE ON THEM.

208. Definitions.
209. Application for sale of holding.
210. Proclamation announcing sale.
211. Sale of tenure subject to registered incumbrances and effect thereof.
212. Sale of tenure with power to avoid all incumbrances and effect thereof.
213. Sale of occupancy-holding with power to avoid incumbrances and effect thereof.
214. Procedure for annulling incumbrances under the foregoing sections.
215. Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.
216. Rules for disposal of the sale-proceeds.
217. Holding to be released from attachment only on payment into Court of amount of decree with costs; or on confession of satisfaction by decree-holder.
218. Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.
219. Inferior tenant paying into Court may deduct from rent.
220. Decree-holder may bid at sale; judgment-debtor may not.
221. Operation of sections 313 and 326 of Code of Civil Procedure excluded.
222. Registration of certain instruments creating incumbrances.
223. Registration-officers to serve copies of instruments creating incumbrances.

CHAPTER XVI.

ON LIMITATION.

224. Limitation in suits, appeals and applications in Schedule IV.
225. Portions of the Indian Limitation Act not applicable to such suits, &c.

CHAPTER XVII.

SUPPLEMENTARY.

226. Saving as to service-tenures.
227. Power to make rules regarding procedure and powers of officers.
228. Procedure for making, publication and confirmation of rules.
229. Náibs and gumáshias of landlords.
230. Rights of pasturage, forest-rights, &c.

SCHEDULE I.—Repeal of enactments.

SCHEDULE II.—Extract from preamble to Re-
gulation VIII of 1819.

SCHEDULE III.—Summary sale of patni tenures.

Bengal Tenancy Bill.
(Chapter I.—Preliminary. Sec. 3.)

Explanation of abbreviations in margin.

D. means Mr. Field's Digest.

C. B., the Bill prepared by the Commission.

B. B., the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.

A
BILL

TO

Amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Tenancy Act, 1884.
Short title.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local Gazette, appoint in this behalf.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local Gazette, extend the whole or any part of this Act to the Division of Orissa.

2. (1) The enactments specified in Schedule hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) When this Act is extended to the Division of Orissa, such of those enactments as are in force in that Division, or, where a part only of this Act is so extended, so much of them as is inconsistent with that part, shall be repealed in that Division.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. The following definitions and rules shall apply in the construction of this Act unless there is something repugnant in the subject or context:—

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district:

(2) "Proprietor" means a person or a number of persons owning an estate:

(3) "Tenure" includes an under-tenure and the interest of every tenant of the class referred to in section 14. New.

Illustrations.

(a)—A *durpatni* or *spatni* interest or a *mokurree* holding is a tenure.

(b)—A *dar-ijarah* or a farm for a term of years is a tenure.

(4) "Tenure-holder" means a person or a number of persons owning a tenure.

(5) A person shall not be deemed to be a raiyat, in respect of any land, or to hold that land as a raiyat, unless he holds it for the purpose of agriculture, horticulture or pasture, or he or his predecessor in interest came into possession of it for such purpose: C. B., s. 3
B. B., s. 3
and

Provided that a person shall be deemed to hold as a raiyat any *bastu* or homestead land included in the same holding with other land held by him as a raiyat.

Explanation.—A person may hold land for a purpose mentioned in this clause though he has sublet it.

(6) "Under-raiyat" means a tenant holding land whether immediately or mediately below a raiyat.

(7) "Bastu holding" means *bastu* or other homestead land held by a tenant having the right provided for by Chapter VII. New.

(8) "Tenant" does not include any person who is not a tenure-holder, raiyat or under-raiyat, or the tenant of a *bastu* holding. New.

(9) "Landlord" means a person or a number of persons immediately under whom a tenant holds.

Bengal Tenancy Bill.(Chapter I.—Preliminary, Chapter II.—*Khamar and Raiyatí Land.* Secs. 4—8.)

(10) "Rent" means whatever is payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

(11) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

D. s. 101.
C. B. s. 56.
B. B. s. 48.

(12) "Arrear" means an instalment, or part of an instalment, of rent which is not paid before sunset of the day on which it is payable.

(13) "Holding" means a parcel of land held by a tenant of a landlord under one lease or one set of conditions.

Now.

(14) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of Bysáck, and where the Fasli or Amli year prevails, the year commencing on the first day of Asin.

C. B. ss. 60 & 16.
B. B. ss. 6 & 15.

(15) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa made in the year 1793.

(16) "Transfer" includes sale, whether voluntary or in execution of a decree, and mortgage and gift.

(17) "Succession" includes both intestate and testamentary succession.

(18) "Bihár" means all the districts of the Patna Division, and such district or parts of districts of the Bhágalpur Division as the Lieutenant-Governor of Bengal may from time to time, by notification in the official Gazette, declare to be included in Bihár for the purposes of this Act.

(19) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(20) "Prescribed" means prescribed by the Local Government by notification in the official Gazette.

(21) "Collector" means the Collector of a District or any other officer appointed by the Local Government to discharge the functions of a Collector under this Act.

(22) "Revenue-officer" in any provision of this Act means such officer as the Local Government may appoint to discharge the functions of a Revenue-officer under that provision.

C. B. s. 4
Report of
Rent Commis-
sion, s. 3.
B. B. s. 4.

4. Nothing in this Act shall affect—

Saving of custom, special law, &c.

(a) any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions;

(b) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(c) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the revenue-authorities;

(d) any enactment relating to the avoidance of tenancies by a sale for arrears of the Government revenue;

(e) any enactment relating to the partition of out revenue-paying estates;

(f) any other special or local law not repealed either expressly or by necessary implication by this Act or

(g) any incident of a ghátwáli or other service tenure.

Illustration.

The custom that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom accordingly, wherever it exists, will not be affected by this Act.

CHAPTER II.

OF THE DISTINCTION BETWEEN *KHAMAR* AND *RAIYATÍ* LAND.

Khamar land defined. 5. "*Khamar land*" means—

1st, land situated elsewhere than in Bihár which a proprietor has held, whether under the name of *khamar*, *nij-jote*, or otherwise, as his private land for twelve continuous years before the commencement of this Act, and

2nd, land situate in Bihár which—

(a) is recognized as *zeraat* by a village custom established before the commencement of this Act; or

(b) is proved to have been held by a proprietor as *zeraat* for twelve continuous years immediately before the commencement of this Act.

6. All land which is not *khamar* land of some estate shall be deemed to be *raiyatí* land, and all land shall be presumed to be *raiyatí* land until the contrary is proved.

7. The Local Government may direct that a survey and register shall be made of all *khamar* land situate in any district or part of a district.

8. The survey shall be made by the Collector or by an officer authorized by the Collector in that behalf, under such rules as may be prescribed by the Local Government for the conduct of such surveys; and the Collector or such officer may exercise any of the powers conferred upon a Collector by the Bengal Survey Act of 1875, except the powers in Part IV of the said Act relating to the apportionment and recovery of expenses.

(Chapter III.—Tenure-holders generally. Secs. 9—21.)

§. 82. 13. When the approval of a register by the Local Government has been notified under section twelve, all land entered in the register shall, notwithstanding anything in the foregoing sections, be deemed to be khamar land, and all other land situate in the local area for which the register has been prepared shall, notwithstanding anything as aforesaid, be deemed to be raiyat land.

A.—Of the Right to hold at fixed rents.

going sections of this chapter shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a fixed rate of rent has been expressly recognized in a Revenue-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

*Bengal Tenancy Bill.**(Chapter III.—Tenure-holders generally. S'cs. 21—28.)**B.—Of the enhancement of rent.*

[D. s. 23.
C. B. ss. 9 &
12.
B. B. ss. 9 &
10.]

21. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable under sub-section two, the Court shall not, except as provided in sub-sections four and five, leave the tenure-holder as profit more than thirty per centum or less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting those rents.

(4) If more than half the land included in the area of the tenure was unreclaimed at the time when the tenure was created, and if the reclamation of the unreclaimed land was one of the objects of the creation of the tenure, and that land was reclaimed accordingly, the Court, in determining what is fair and equitable under sub-section two, shall not leave the tenure-holder as profit less than twenty per centum of the balance mentioned in sub-section three, and may leave him as profit any share of that balance whether it exceeds thirty per centum thereof or not.

(5) If, in any case to which sub-section four does not apply, the tenure-holder has made improvements on the land, the Court, in determining what is fair and equitable under sub-section two, may leave him as profit any share of the balance mentioned in sub-section three it thinks fit, provided it be not less than ten per centum of the balance.

(6) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

[C. B. s. 10.
B. B. s. 11.]

22. Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under section 21 shall not be more than double the rent previously payable.

[C. B. s. 10.
B. B. s. 11.]

23. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

[C. B. s. 10.
B. B. s. 11.]

24. When the rent of a tenure-holder has been enhanced under section 21 or by contract, it shall not be again enhanced under that section during the ten years next following the date on which it has been so enhanced.

C.—Of the Incidents of permanent tenures.

25. Every permanent tenure shall, subject to the provisions of this Act in respect of registration, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

26. A holder of a permanent tenure shall not be ejected by his landlord except under a decree of a Civil Court passed in accordance with this Act on the ground that he has broken a condition on breach of which he is, under the terms of a written contract between him and his landlord, liable to be ejected.

D.—Of the registration of transfers of, and succession to, permanent tenures.

27. (1) When a transfer of a permanent tenure (other than a transfer by sale in execution of a decree or by a summary sale under Chapter IV) or a succession to such a tenure takes place, the landlord shall, subject, in the case of a patni tenure, to the provisions of section 39, register the same on application made to him by the transferor and transferee, or by the person succeeding, as the case may be, and on payment by the applicant of the fee next hereinafter prescribed.

(2) The fee payable on an application under this section shall be as follows, namely:—

(a) When the application is made not more than six months from the date of the transfer or succession, a fee of two per centum upon the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees.

(b) When the application is made more than six months from the date of the transfer or succession, a fee of twenty per centum upon the annual rent of the tenure: provided that no such fee shall be less than ten rupees or more than one thousand rupees.

(3) When a landlord refuses to comply with an application for registration, made as required by sub-section one, he shall deliver to the applicant a statement in writing of the reasons for his refusal.

28. (1) An application for the registration of a transfer of or a succession to a tenure may, instead of being made to the landlord under section 27, be made to such Revenue-officer as the Local Government may from time to time appoint in this behalf; and, on its being so made, and on the fee payable under section 27 being paid to the officer, he shall cause a notice to be served

*Bengal Tenancy Bill.**(Chapter III.—Tenure-holders generally. Secs. 29—35.)*

on the landlord, requiring him to register the transfer or succession, and informing him that the fee has been received and will be paid to him on demand when the registration has been effected.

(2) A landlord on whom a notice is served under this section shall, subject in the case of a *patni* tenure to the provisions of section 39, be bound to comply forthwith with the requisition therein contained.

29. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 314 of the Code of Civil Procedure, require the purchaser to pay into Court the registration fee prescribed by section 27, clause (a), and such further fee for service of notice of the sale on the landlord as may be prescribed by the rules under section 35.

(2) When the sale has been confirmed, the Court shall forthwith cause to be served on the landlord a notice of the sale, requiring him to register the same, and informing him that the registration-fee has been received and will be paid to him on demand when the registration has been effected; and the landlord shall be bound to comply with the requisition forthwith.

30. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, or by summary sale under Chapter IV, the landlord shall be bound to register the transfer without any application or requisition being made to him in this behalf, and without the payment of any fee.

31. When a transfer of a permanent tenure (not being a transfer by sale in execution of a decree or by summary sale under Chapter IV) has taken place, the landlord may, until the transfer has been registered under section 27, or a Revenue-officer has ordered a notice to be served under section 28, hold the transferor and transferee jointly and severally liable for arrears of rent accruing subsequent to the transfer.

32. (1) When a landlord refuses or neglects for a period of one month to register a transfer or succession which he is bound to register under the foregoing sections, the transferor or transferee, or, as the case may be, the person succeeding, may apply to any Civil Court having jurisdiction in the local area within which the land is situate to compel such registration.

(2) The Court to which an application is made under sub-section one may issue a notice to the landlord, and, when the application is made by one party to a transfer, also to the other party or parties

to the transfer, requiring him or them, as the case may be, to show cause, at a time and place therein specified, why the transfer or succession should not be registered.

(3) If no cause as aforesaid is so shown, the Court may make an order directing the landlord to register the transfer or succession, and the order so made shall have the force of a decree in a suit.

33. (1) When a transfer (other than a transfer by sale in execution of a decree or by summary sale under Chapter IV) or a succession, registrable under the foregoing sections, has taken place, and no application is made for its registration within the six months following the date on which it has taken place, the landlord may apply to any Civil Court as aforesaid to compel the parties to the transfer, or the person succeeding, as the case may be, to consent to its registration and pay the fee mentioned in section 27, clause (b).

(2) The Court to which an application is made under sub-section one may issue a notice calling upon the parties to the transfer, or the person succeeding, as the case may be, to show cause, at a time and place specified in the notice, why they or he should not consent to the registration and pay the fee.

(3) If no cause as aforesaid is so shown, the Court may make an order authorising the landlord to register the transfer or succession, and directing the transferee, or the person succeeding, as the case may be, to pay the fee; and the order so made shall have the force of a decree in a suit.

34. When a transfer of, or a succession to, a tenure has been registered under the foregoing sections, every person to or from whom the tenure or any share thereof is transferred, or (as the case may be) every person succeeding to the tenure, shall be entitled to receive free of charge from the landlord on demand a copy of the entry in the register relating to the tenure, certified under his hand as a true copy, and to receive from time to time in like manner as many additional copies as he may demand: provided that for every such additional copy he shall pay to the landlord such fee, not less than *eight annas* or more than *five rupees*, as the Board of Revenue may from time to time fix in this behalf.

35. (1) The Board of Revenue may from time to time, by rules consistent with this Act and published in the official Gazette, prescribe forms for the registers to be maintained under the foregoing sections, and determine the mode in which, and the place at which, applications are to be made under section 27, and generally the procedure to be followed in regard to registration.

*Bengal Tenancy Bill.**(Chapter IV.—Patni Tenures. Secs. 36—45.)*

(2) In making any rule under sub-section one the Board may provide that any breach thereof shall be punishable with fine which may extend to fifty rupees.

CHAPTER IV.

OF PATNÍ TENURES.

D s. 26.
C. B., ss. 14
& 16.
B. B., ss. 13
& 14.]

36. "Patní tenure" means a tenure of the kind described in Schedule II annexed to this Act and includes the darpatni and other similar under-tenures referred to in that schedule.

D s. 26.
C. B., s. 14.
B. B., s. 13.

37. (1) Every patní tenure shall be deemed to be a permanent tenure.

(2) The holder of a patní tenure may, subject to the provisions of this Act, let the land comprised in his tenure or any part thereof.

[B. B. s. 45
(a).]

38. When a patní tenure is transferred, whether voluntarily or by sale in execution of a decree, or by summary sale under section 42, the landlord may require the transferee to furnish substantial security to the amount of one half year's rent of the tenure, for the payment of the rent and the fulfilment of the other conditions of the tenure.

[B. B. s. 45
(a).]

39. When a patní tenure is transferred otherwise than by sale in execution of a decree, or by summary sale under section 42, the landlord may refuse registration of voluntary transfer when security is not given.

[B. B. s. 45
(b).]

40. (1) In the case of a transfer by sale in execution of a decree, or by summary sale under section 42, if security is demanded by the landlord from the purchaser under section 38, and is not furnished within one month from the date on which it is so demanded, the landlord may attach and hold possession of the tenure to the exclusion of the transferee until the security is furnished.

(2) While an attachment under this section continues, the landlord may collect the rents from the undertenure-holders or raiyats, and, after deducting therefrom the cost of the attachment, the expenses of collection and the rent due to himself, he shall hold the balance in trust for the purchaser.

(3) If the rents so collected are not sufficient to discharge the cost of the attachment, the expenses of collection, and the rent due to the landlord, the purchaser shall be liable for the deficiency, and the landlord may proceed against him for the recovery of the same.

[B. B. s. 45
(c).]

41. (1) If the security tendered under section 38 by any transferee is rejected by the landlord, the transferee may,

within three months from the date of the rejection, apply to the Civil Court for an order directing the landlord to receive the security, and the Court, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting the application.

(2) No appeal shall lie from any order under this section.

42. If default is made in payment of the rent due in respect of a patní tenure, held immediately from a proprietor, the landlord may, in addition to any other remedy given him by law, apply for the summary sale of the tenure in accordance with the rules for the sale of patní taluqs at the instance of zemindars, contained in Schedule III annexed to this Act.

Provided that nothing in those rules shall entitle a purchaser at any such sale to eject an occupancy-raiyat or cancel any contract entitling him to hold at a rent which was fair and equitable at the time the contract was made.

CHAPTER V.—OF OCCUPANCY RAIYATS GENERALLY.

[B. S. I
Expl. II]

Interpretation.

43. For the purposes of this chapter—

(a) "village" means an area included in a village-map of the revenue-survey within the same exterior boundary, and, where no such maps have been prepared, such area as the Local Government or any officer appointed by the Local Government in this behalf may determine: and

[New.]

(b) where two or more estates have been created by one or more partitions taking place since the first day of January, 1853, the area comprised in the parent estate of which they would have formed part if no such partition had taken place, shall be deemed to be a single estate.

44. Every raiyat who, immediately before the commencement of this Act, has, by the operation of any enactment, by custom having the force of law, or otherwise, a right of occupancy in any land shall, when this Act comes into force, become, for the purposes of this Act, an occupancy-raiyat of that land.

45. (1) Every person who, for a period of twelve years, whether before or after the commencement of this Act, has continuously held, as a raiyat, raiyatí land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

*Bengal Tenancy Bill.**(Chapter V.—Raiyats with Right of Occupancy. Secs. 46—52.)*

(2) A person shall be deemed for the purposes of this section to have held as a raiyat any raiyat land held as a raiyat by a person whose heir he is.

(3) Raiyat land held by two or more co-sharers as a raiyat holding shall be deemed for the purposes of this section to have been held as a raiyat holding also by each such co-sharer.

46. If a settled raiyat of a village or estate has ceased for a period of one year, whether before or after the commencement of this Act, to hold raiyat land as a raiyat in that village or estate, either alone or as a co-sharer with others, he shall be deemed to have ceased, on the expiration of that period, to be a settled raiyat of that village or estate.

47. Every settled raiyat of a village or estate holding after the second day of March 1883 as a raiyat any raiyat land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force:

Provided that a person shall not acquire a right of occupancy under this section in respect of any land held by him alone as owner, tenure-holder or ijaradár.

48. (1) A proprietor or permanent tenure-holder, from whom a person takes land as a raiyat, or immediately under whom a person holds land as a raiyat, may grant to that person an occupancy-right in respect of that land.

(2) An occupancy-right granted under this section shall be deemed to be an occupancy-right within the meaning of this Act.

49. (1) Every person who, for a period of twelve years ending after the commencement of this Act, has held khamar land as a raiyat shall, unless he has held it for any portion of that period under a lease for a fixed period, acquire a right of occupancy in that land.

(2) The holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat for the purposes of this section.

50. When a raiyat has an occupancy-right in respect of any land, the following provisions shall, notwithstanding any contract between him and his landlord to the contrary, apply, namely:—

(a) he may use the land in any manner which does not render it unfit for the purposes of the tenancy:

(b) he may make improvements on the land as by this Act provided:

(c) he shall pay rent at fair and equitable rates determined as by this Act provided: [B. B. s. 21. (d).]

(d) he shall not be ejected by his landlord from the land, except in execution of a decree for ejection passed in accordance with this Act on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a written contract between him and his landlord, liable to be ejected: [B. B. s. 21. (e). 31,69 (a).]

(e) he may sub-let the land or any part thereof: [B. B. s. 21.]

(f) his interest in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred, and bequeathed by will in the same manner and to the same extent as other immoveable property: [B. B. s. 21. (a) and (b).]

(g) his interest in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property: provided that, in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his interest in the land shall go to his landlord. [B. B. s. 21. (c).]

51. (1) When an occupancy-raiyat intends to sell his occupancy-right to any person other than the landlord, he shall file in the office of the Collector, or of the officer in charge of the sub-division, for service on the landlord, a written notice of his intention, stating the person to whom he intends to sell the right, and shall defer proceeding with the sale for one month from the date on which he files the notice.

(2) The officer in whose office the notice is filed shall forthwith cause it to be served on the landlord.

(3) The landlord may, within the period of one month from the date of the notice being filed, claim to purchase the occupancy-right from the raiyat at such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of one month; and, if the landlord so claims, the raiyat shall sell the right to him accordingly.

(4) If a raiyat sells his right of occupancy in contravention of this section, the landlord may, within six months from the date of the sale, claim to purchase the right from the purchaser or any other person into whose hands it may have passed at a price ten per centum below its estimated value, and, if the landlord so claims, the purchaser or that person, as the case may be, shall sell the right to him accordingly.

52. Where an occupancy-right is sold in execution of a decree, and two or more persons, one of whom is the landlord, respectively ad-

Landlord's right of pre-emption on sale in execution.

*Bengal Tenancy Bill.**(Chapter V.—Raiyats with Right of Occupancy. Secs. 53—59.)*

vance the same sum at any bidding, the bidding shall be deemed to be the bidding of the landlord.

53. (1) Where a right of occupancy has been mortgaged by the raiyat and an order absolute for foreclosure is applied for in respect of it under section 87 of the Transfer of Property Act, 1882, the Court shall, if it proposes to make the order, cause a notice of the application to be served on the landlord, and shall defer making the order for a period of one month from the service of the notice.

(2) If the landlord within the said period of one month pays into Court the amount requisite to redeem the mortgage, the Court shall pay that amount to the plaintiff in the suit, declare the landlord entitled to stand in the place of the plaintiff, and pass an order absolute for foreclosure in favour of the landlord.

(3) An order absolute passed under sub-section two shall have the same effect as if the landlord had been the mortgagee and the plaintiff in the suit.

54. (1) When an occupancy-raiyat makes a gift of his occupancy-right to any person other than his landlord, he shall forthwith file in the office of the Collector, or of the officer in charge of the sub-division, for service on the landlord, a written notice of the gift, stating the person to whom he has made it.

(2) The officer in whose office the notice is filed shall forthwith cause it to be served on the landlord.

(3) The landlord may, within the period of one month from the date on which the notice is filed, claim to purchase the right from the donee, or any other person into whose hands it may have passed, at such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of one month, and, if the landlord so claims, the donee or other person as aforesaid shall sell the right to him accordingly.

(4) If a raiyat makes a gift of his occupancy-right, and does not comply with the provisions of this section, the landlord may, within six months from the date on which the gift is made, claim to purchase the right from the donee, or any other person into whose hands it may have passed, at a price ten per centum below its estimated value; and, if the landlord so claims, the donee or that person, as the case may be, shall sell the right to him accordingly.

55. When an occupancy-raiyat dies, and any person, other than a person to whom, if the raiyat had died intestate, the occupancy-right would have descended, acquires that right under a bequest made by the raiyat, the landlord

may, within the period of six months from the date on which the right is so acquired, claim to purchase the right from the legatee, or any other person into whose hands it may have passed, at such price as may be agreed upon between them, or, if they cannot agree upon a price, at such price as the Civil Court may, on the application of the landlord, made within the said period of six months, fix in this behalf, and if the landlord so claims the legatee or other person as aforesaid shall sell the right to him accordingly.

56. Notwithstanding any contract to the contrary, when the landlord of an occupancy-raiyat acquires, under the foregoing sections or otherwise, the occupancy-right in any of the land comprised in the holding, any person thereafter holding the land as a raiyat shall have a right of occupancy in respect of it, and, if immediately before the acquisition of the right by the landlord the rent of the land was a money-rent, shall be entitled to hold at a money-rent fixed in accordance with the provisions of this Act.

57. Every person succeeding by way of intestate succession to the occupancy-rights, or any share of the occupancy-rights, of a settled raiyat of a village or estate, in respect of any land situate in that village or estate, shall become a settled raiyat of the village or estate:

Provided that, when a person so succeeding holds as a raiyat at the time when he so succeeds other land in the same village or estate, he shall not, merely by reason of becoming a settled raiyat of the village or estate under this section, acquire, under section 47, an occupancy-right in that other land.

CHAPTER VI.

OF THE RENT PAYABLE BY OCCUPANCY-RAIYATS.

(A).—Of money-rents generally.

58. A money-rent payable by an occupancy-raiyat shall be presumed to be fair and equitable, and shall continue to be paid by him until it is enhanced under this Act or reduced.

59. (1) A money-rent payable by an occupancy-raiyat may be enhanced by a contract in writing approved of, and registered by, a Revenue-officer appointed by the Local Government in this behalf.

(2) A Revenue-officer shall not, under this section, approve or register any contract by which a raiyat engages to pay a rent more than six annas per rupee greater than that previously payable, or more than one-fifth of the estimated average annual

*Bengal Tenancy Bill.**(Chapter VI.—Rent payable by Occupancy-raiyats. Secs. 60—67.)*

value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time, or any contract, until he has satisfied himself that it is fair and equitable, and that the raiyat in entering into it acts as a free agent.

60. Except as provided by section 59, or

Money-rents not enhanced except as provided. on account of an addition to the area of the holding by alluvion or otherwise, a money-rent payable by an occupancy-raiyat shall not be enhanced otherwise than by a decree passed under this chapter.

61. (1) When raiyat land which has previously

Limit of money rent payable by settled raiyat taking new holding. been held by a tenant at a money-rent is let to a settled raiyat of the village or estate

in which it is situate, that raiyat shall not be bound to pay therefor any rent higher than that which was paid by the previous tenant, unless the higher rent has been fixed by a contract in writing, approved of and registered by a Revenue-officer appointed by the Local Government in this behalf.

(2) A Revenue-officer shall not under this section approve of or register any contract by which a raiyat engages to pay a rent more than one-fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time, or any contract, until he has satisfied himself that it is fair and equitable, and that the raiyat in entering into it acts as a free agent.

B.—Of the preparation of a table of rates and produce, and of suits to enhance money rents where such a table is in force.

1 62. The Local Government may, by an order in the official Gazette, direct a

Power to direct preparation of table. Revenue-officer to prepare for any local area, with the aid of

such assessors as the Local Government may appoint in this behalf, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats, the average gross produce of the land and the average value of that produce.

Contents of table. 63. The table shall specify—

(a) the several classes of land for which, having regard to the nature of the soil, situation, means of irrigation and other like considerations, it is necessary to fix different rates of rent;

(b) the rate, or the maximum and minimum rates, of rent fairly and equitably payable by occupancy-raiyats holding land of each such class; and

(c) the estimated average amount, or the maximum and minimum estimated average amounts, of the gross produce in staple crops of land of each such class, and the estimated average value or values of that produce.

Principle on which rent-rates are to be fixed. 64. In fixing the rate of [B. B. s. 183.] rent for any class of land under section 63 regard shall be had—

(a) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time the table is prepared;

(b) to the value of the average annual gross produce of land of that class and the cost of raising such produce about the time at which those rates were fixed, or, if that time or the value and cost about that time cannot readily be ascertained, to the value of the average annual gross produce and the cost of raising such produce about any other time which it may appear equitable to take for the purpose of comparison;

(c) to the value of the average annual gross produce of land of that class and the cost of raising such produce at the time at which the table is prepared; and

(d) to the following rule, namely, that when the rate of rent for any class of land is raised on account of an increase in the value of the average gross produce of land of that class, the new rate shall not bear to the old rate a higher proportion than the increased value of the produce bears to the former value:

Provided that the rate fixed for any class of [B. B. s. 24, cl. (c).] land shall not in any case exceed one-fifth of the estimated average annual value of the gross produce in staple crops of land of that class, calculated at the price at which raiyats sell at harvest-time.

65. When the Revenue-officer has prepared the [B. B. s. 137.]

Local publication of the table. table, he shall publish it in the local area to which it relates in the vernacular language prevailing in that local area, in such manner as the Board of Revenue may from time to time prescribe.

66. Any person objecting to any entry in the [B. B. s. 138.]

Revenue-officer to deal with objections. table may present a petition to the Revenue-officer within a period of one month after the publication; and the Revenue-officer, with the aid of the assessors, shall consider any such objection, and may alter or amend the table.

67. If no objection is made within the said [B. B. s. 139.]

Table to be submitted to superior Revenue-authorities. period of one month, or, where objections are made, after those objections have been disposed of, the Revenue-officer shall submit the table, together with his proceedings, a report setting forth the grounds of his decision on each point, and any petitions of objection which may have been

*Bengal Tenancy Bill.**(Chapter VI.—Rent payable by Occupancy-raiyats. Secs. 68—73.)*

received, through the Commissioner of the Division, to the Board of Revenue for approval.

[B. B. s. 140.] **68.** The Board of Revenue may amend the table submitted under section 67 in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further enquiry.

[B. B. s. 141.] **69.** When a table of rates has been sanctioned by the Board, it shall be submitted to the Local Government, which may amend the same in any manner it thinks fit, and may direct, if it thinks fit, that the table or amended table shall be published in the official Gazette with a specification of the local area to which it applies.

[B. B. s. 143.] **70.** A table for any local area published under section 69 shall come into force on the date on which it is so published, and shall continue in force for such period, not less than ten or more than thirty years, as the Local Government at the time of publication may direct.

[B. B. s. 142.] **71.** The publication of a table under section 69 shall be conclusive evidence in any proceeding under this Act—

- (1) that the proceedings for the preparation of the table have been duly conducted in accordance with this Act;
- (2) that, except as in this Act provided, the rates shown in the table for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies;
- (3) that the average gross produce of land of any class, and the average value thereof, are in accordance with the gross produce and the value specified in regard to that class in the table.

72. All expenses incurred by the Government in preparing a table of rates and produce for any local area, including the salaries of all officers employed exclusively in its preparation, and such portions as the Local Government may from time to time fix of the salaries of officers employed in its preparation in addition to their other public duties, shall be defrayed by occupancy-raiyats and their landlords in that local area in such proportions as the Local Government may from time to time determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of land-revenue due by him.

[B. B. s. 144.] **73.** When a table is in force under the foregoing sections for any local area, the landlord of any holding within that area,

held by an occupancy-raiyat at a money rent, may, subject to the provisions of section 78, institute a suit to enhance the rent then payable on the ground that it is below that which would be payable at the rates shown in the table; and the Court shall enhance the rent in accordance with the rates shown in the table, or, where for any class of land a maximum and a minimum rate are entered in the table, to such rate, not higher than the maximum and not lower than the minimum, as it thinks fit: Provided that—

1st.—Where the rent of any land comprised in the holding would, by reason of a change having taken place in or in regard to the land since the raiyat or his predecessor in interest began to hold it, be fixed under this section at a higher rate, and would, but for that change, have been fixed under this section at a lower rate, the following rules shall apply, namely:—

- (a) if the change has been effected solely [B. B. s. 145.] by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of that land at the lower rate;
- (b) if the change has been effected partly [New.] by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of the land at such rate intermediate between the higher rate and the lower rate as, having regard to all the circumstances of the case, it thinks fair and equitable; and
- (c) if it is not proved that the change has [B. B. s. 146.] been effected by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, the Court shall fix the rent of the land at a rate equal to the lower rate, together with half the difference between the higher rate and the lower rate.

2ndly.—When the raiyat proves that by contract or by custom, or on some equitable ground, he is entitled to hold at a rate lower than the rate applicable under this section, the Court shall fix the rent at the lower rate.

Illustrations.

(a) The rates shown in the table for land of a certain description are—

when the land is irrigated from a well ... Rs. 4 per acre.
when the land is not so irrigated ... Rs. 2 "

The holdings of A, B, C and D, occupancy-raiyats, are composed of land of that description irrigated from wells constructed on these holdings respectively.

*Bengal Tenancy Bill.**(Chapter VI.—Rent payable by Occupancy-raiyats. Secs. 74—76.)*

The well on A's holding is an ancient one existing from a time anterior to the tenancy: that on B's holding has been constructed by the landlord since the commencement of the tenancy: that on C's holding has been constructed by the raiyat: that on D's holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A and B must be fixed at Rs. 4 per acre, that of C's holding at Rs. 2 per acre, and that of D's holding at such rate intermediate between Rs. 2 and Rs. 4 as the Court thinks fair and equitable.

(b) The rates shown in the table for land of a certain description are as follows:—

when such land is irrigated from a	
branch of a river	Rs. 4 per acre.
when such land is not so irrigated	Rs. 2 per acre.

The holdings of E and F, occupancy-raiyats, are composed of land of that description, and were not irrigable until 40 years ago, when, owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E has been in occupation of his holding 50 years, F only 30; the rent of E's holding must be fixed at Rs. 3, that of F's holding at Rs. 4.

C.—Of suits to enhance money rents where a table of rates and produce is not in force.

74. (1) The landlord of a holding held at a money rent by an occupancy-raiyat and situate in a local area for which a table of rates and produce, prepared under the foregoing sections, is not in force, may, subject to the provisions of section 78, institute a suit to enhance the rent on one or more of the following grounds, namely:—

- (1) that the rate of rent paid by the raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity;
- (2) that the productive powers of the land held by the raiyat, as compared with those powers at the time when the rent was fixed, or, when that time or the productive powers at that time cannot readily be ascertained, with the productive powers at any other time which it may appear equitable to take for purposes of comparison, have increased otherwise than by the sole agency or at the sole expense of the raiyat or his predecessor in interest and from causes not merely temporary or casual; and
- (3) that the average prices of produce in the locality, or at the usual markets, as compared with similar prices about the time when the rent was fixed, or, when that time or the prices prevailing about that time cannot readily be ascertained, with the similar prices about any other time which it may appear equitable to take for purposes of comparison, have increased otherwise than by the sole agency or at the sole expense of the raiyat or his predecessor in interest, and from causes not merely temporary or casual.

(2) Nothing in this section shall affect any contract binding a landlord not to enhance the rent of a tenant.

Illustrations of Ground (1).

(a.) A's paternal grandfather seventy years ago reclaimed the land which A, an occupancy-raiyat, now holds, and which came to him by inheritance from such paternal grandfather. B is an occupancy-raiyat who holds land which was in a cultivable state when B was first let into possession thereof. There is evidence that the hereditary descendant of a raiyat who, being the first settler, reclaimed the land has a special privilege. A and B are not raiyats of the same class.

(b.) A is in possession of a holding which has descended to him from his great-grandfather, who held it at the time of the Permanent Settlement. B was let into possession of his holding twenty years ago. There is evidence that the descendants of raiyats who were in possession at the time of the Permanent Settlement customarily hold at rates less than raiyats who have come into possession at a later period. A and B are not raiyats of the same class.

75. All enhancements of rent on the second or third of the grounds specified in section 74. in section seventy-four shall be subject to the following rules, namely:—

(a) If the increase of the productive powers of the land, or of the prices of produce, has been effected wholly by the agency or at the expense of the landlord or his predecessor in interest, the landlord shall be entitled to the whole benefit of the increase:

(b) If the increase has been effected partly by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the benefit shall be divided between the landlord and the raiyat in such shares as the Court, having regard to all the circumstances of the case, thinks fair and equitable:

(c) If it is not proved that the increase has taken place by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, each shall be entitled to one-half of the benefit: Provided that in any such case the enhanced rent shall not bear to the rent previously payable a higher proportion than the increased productive powers or increased prices bear (as the case may be) to the former productive powers or former prices:

(d) The enhanced rent shall not in any case exceed one-fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time.

D.—Rules applicable to suits to enhance money rents generally.

76. The rent of a holding shall not be enhanced in a suit under any of the foregoing sections of this chapter so that the enhanced rent shall be more than double the rent previously payable.

B. N. 23
(3) and
4 (1) 2]

[B. N. 24
(a) and (c).]

*Bengal Tenancy Bill.**(Chapter VI.—Rent payable by Occupancy-raiyats. Secs. 77—82.)*[B. B. s. 24
d).]

77. When a Court passing a decree for enhancement under any of those sections considers that the immediate enforcement of the decree in its full extent would be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement decreed has been reached.

Power to order progressive enhancement.

[B. B. s. 143.]

78. When the rent of an occupancy-holding has been enhanced by a decree under any of those sections or under any enactment repealed by this Act, or by contract, or has been commuted under section 82, a suit for its enhancement shall not be instituted under this chapter within the ten years next following the date on which it has been so enhanced or commuted, except on the ground that since the rent has been so enhanced or commuted an improvement has been made by the landlord which, but for this section, would entitle him to an enhancement.

E.—Of suits for the reduction of money rents.[B. B. s. 25.
1 (3).]

79. (1) An occupancy-raiyat holding at a money rent may, notwithstanding any contract to the contrary, institute a suit for the reduction of his rent on either or both of the following grounds, and, except as provided by section 96, not otherwise, namely:—

Occupancy-raiyat when entitled to reduction of rent.

(a) on the ground that the productive powers of the land, as compared with those powers at the time when the rent was fixed, or, when that time or the productive powers at that time cannot readily be ascertained, with the productive powers at any other time which it may appear equitable to take for purposes of comparison, have decreased from some cause beyond the raiyat's control, and not merely temporary or casual;

(b) on the ground that the average prices of produce in the locality or at the usual markets, as compared with similar prices about the time when the rent was fixed, or, when that time or the prices prevailing about that time cannot readily be ascertained, with the average prices prevailing about any other time which it may appear equitable to take for purposes of comparison, have decreased from some cause beyond the raiyat's control, and not merely temporary or casual.

(2) In any suit instituted under this section the Court may direct such reduction of the rent as it thinks fair and equitable.

F.—Special rules regarding money rents payable for pasture lands.[B. B. s. 23,
Expl. II.
& s. 24 (c).]

80. (1) Sections 62 to 79, both inclusive, shall not apply to land fit to be used, or which in accordance with local usage is

Special rules for pasture lands.

used, only as pasture; but when such land is held at a money rent by an occupancy-raiyat, the landlord may, subject to any contract between the parties, institute a suit to enhance the rent on the ground—

(a) that the rate of rent payable by the raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity, or

(b) that, having regard to the increase of rent on arable land in the vicinity since the rent payable by the raiyat was fixed, it is reasonable to enhance that rent.

(2) Where an enhancement is applied for on the ground mentioned in clause (b), the Court shall fix the rent at such rate as it thinks fair and equitable.

G.—Of rents payable in kind or varying with the crop.

81 (1). Where an occupancy-raiyat pays rent in kind, or pays as rent the value of a certain share of the actual gross produce, the following rules shall apply, namely:—

(a) notwithstanding any contract or custom to the contrary, the landlord shall not be entitled to recover, in respect of any portion of the holding on which staple crops are grown, more than half the gross produce or its value, as the case may be;

(b) the landlord shall not, except under a contract in writing, be entitled to recover, in respect of any portion of the holding on which other crops are grown, any other description or any greater amount of rent than a sum equal to one-half of the estimated average value of the produce of that portion of the holding if staple crops were grown on it.

(2) Nothing in this section shall prevent a landlord recovering the value of any seed, labour or other assistance he may have contributed towards the production of the crop.

82 (1). An occupancy-raiyat whose holding consists of raiyat land, and who pays rent in kind, or pays as rent the value of a certain share of the actual gross produce of the holding, may, notwithstanding any contract to the contrary, sue to have his rent commuted into a money-rent.

(2) The money-rent shall be fixed at the discretion of the Court—

(a) according to the prevailing money-rent payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity, or

*Bengal Tenancy Bill.**(Chapter VII.—Right of Settled Raiyat in Bastu Land and (Chapter VIII.—
Ordinary Raiyats. Secs. 83—90.)*

(b) according to the average value of the rent actually received by the landlord during the preceding five years.

(3) When a money-rent is fixed under clause (b), a reasonable deduction shall be made by the Court from the average value aforesaid in consideration of the whole risk of cultivation being taken by the raiyat.

H.—Supplementary provisions.

1 83. (1) The Collector of every district shall Collectors to prepare annual price-lists of staple crops. prepare annually lists of the market-prices at harvest-time of staple crops grown in such local areas as the Board of Revenue may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette under the signature of one of the Secretaries to the Board.

(3) Any such price-list so published shall, in any proceedings under this chapter, be conclusive evidence of the prices prevailing in the local area at harvest-time in the year to which it relates.

84. The Board of Revenue may from time to time, Power to make rules. subject to the approval of the Local Government and to the control of the Governor General in Council, make rules—

(a) for the guidance of officers engaged in the preparation of tables of rates and produce under this chapter;

(b) for the guidance of officers engaged in the preparation of price-lists under section 83;

(c) determining what crops shall be deemed to be staple crops for the purposes of this chapter in any local area;

(d) for the guidance of Revenue-officers registering contracts under section 59 and section 61.

(e) for the guidance of Revenue-officers and Courts in estimating the average annual value of the gross produce of land for the purposes of sections 59 and 61 and section 75, clause (d).

CHAPTER VII.

OF THE RIGHT OF A SETTLED RAIYAT IN BASTU LAND.

85. (1) A person who is under Chapter V a settled raiyat to have permanent right in bastu land. settled raiyat of a village or estate as defined in that chapter shall, notwithstanding any contract to the contrary, have a right permanent, heritable and capable of being transferred and bequeathed, in, any *bastu* or other homestead land in that village or estate which is not comprised in an occupancy-holding and which is held by him as the site of, or for the purpose of

erecting, a dwelling-house suitable for himself and his family, together with all necessary out-offices.

(2) A person having a right under sub-section one in any land in a village or estate shall not lose that right merely by reason of his ceasing to be a settled raiyat of that village or estate.

86. (1) Notwithstanding any contract to the contrary, a person having in respect of any land a right under section 85 shall not be ejected from that land except in execution of a decree for ejectment passed in accordance with this Act on the ground that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a written contract between him and his landlord, liable to be ejected, and, if he is so ejected, shall be entitled to compensation for any house or offices of the description referred to in section 85 which may have been erected on the land by him or his predecessor in interest whether before or after the commencement of this Act. [B. B. s. 3]

(2) A Court passing a decree for the ejectment of such a person shall determine the amount of compensation (if any) due to him under sub-section one and shall make the decree conditional on the payment of that amount by the decree-holder.

87. When a person has in respect of any land a right under section 85, and the rent of the land has not been enhanced during the previous ten years, the landlord may, unless barred by any contract between the parties, enhance the rent, so that it may be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used for similar purposes, or at his option so that it may be equal to five per centum of the market-value of the land. [B. B. s. 3]

CHAPTER VIII.

OF ORDINARY RAIYATS.

88. Every person holding raiyat land as a Ordinary raiyat defined. raiyat and not having a right of occupancy in respect of it shall be deemed to hold it as an ordinary raiyat.

89. An ordinary raiyat shall, subject to the provisions of section 119, pay Rents regulated by agreement. such rent as may, from time to time, be fixed by agreement between him and his landlord.

90. Notwithstanding any contract to the contrary, an ordinary raiyat shall not be ejected from raiyat land by his landlord as such except— [B. B. s. 12 (5)]

- (a) as hereinafter provided for arrears of rent,
- (b) in execution of a decree for ejectment passed in accordance with this Act on the ground

*Bengal Tenancy Bill.**•(Chapter VIII.—Ordinary Raiyats and Chapter IX.—Rent of several classes of Tenants. Secs. 91—(6.)*

that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a written contract between him and his landlord, liable to be ejected, or

- (c) in execution of a decree for ejectment passed on the ground that he has refused to agree to an enhancement of rent demanded by his landlord in accordance with the provisions next hereinafter contained.

91. When a landlord wishes to enhance, within the limit fixed by section 119, the rent of an ordinary raiyat holding rayati land at a money-rent not fixed for a term by agreement, and the raiyat does not agree to the enhancement, the landlord may cause to be served on the raiyat through the Civil Court a notice of the enhancement not less than six months before the commencement of the agricultural year in which the landlord desires the enhancement to take effect.

92. (1) If, within the period of one month from the service of a notice under section 91, the raiyat on whom the notice has been served presents to the Court issuing the notice a statement in writing declaring his willingness to pay the enhanced rent, he shall be deemed to have agreed to pay that rent from the commencement of the agricultural year next following.

(2) If the raiyat does not, within the said period of one month, present to the Court a statement as aforesaid, the landlord may, not less than ten weeks before the commencement of the agricultural year next following, institute a suit to eject the raiyat.

93. (1) If, in any suit instituted under section 92, the defendant appears and agrees to pay the enhanced rent demanded, his agreement shall thereupon be recorded, and he shall not be ejected, but shall be liable to pay that rent from the commencement of the agricultural year next following the date of the agreement.

(2) If the defendant does not appear, or if, on appearing, he does not agree to pay the enhanced rent demanded, the Court may pass a decree for his ejectment on condition that, within fifteen days from the date of the decree, the landlord deposits in Court—

- (a) such sum (if any) as may be declared by the decree to be payable to the raiyat as compensation for improvements; and
- (b) a further sum as compensation for disturbance equal to ten times the yearly increase of rent demanded.

94. (1) If these sums are so deposited, the Decree when absolute: decree shall be made absolute, and the sums deposited shall be paid to the raiyat.

(2) If these sums are not so deposited, the decree shall become void, when to become void. and the raiyat shall remain in occupation of his holding at the rent previously paid by him.

95. When a raiyat has agreed, under section 92 or section 93, to pay an enhanced rent for his holding, or a decree to eject him from the holding has become void under section 94, no notice shall be served on him under section 91 in respect of that holding during the ten years next following the date on which he has so agreed, or the decree has become void, as the case may be.

CHAPTER IX.

PROVISIONS REGARDING RENT APPLICABLE TO SEVERAL CLASSES OF TENANTS.

A.—Of alterations of rent consequent on alterations of the area of the holding of a tenure-holder or occupancy raiyat.

96. (1) Notwithstanding anything in Chapter III or Chapter VI, every tenure-holder shall, in the absence of a contract to the contrary, and every occupancy-tenant shall, notwithstanding any contract to the contrary,—

- (a) be liable to pay additional rent for all land added to the area of his holding by alluvion or otherwise, unless he can show that the land has reformed on the site of land which was formerly included in that area, and for the loss of which he has had no abatement of rent; and
- (b) be entitled to a reduction of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise, unless it is proved that the land lost was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) The amount added to the rent shall be calculated at the rates payable by occupancy-raiyats for lands of a similar description and with similar advantages in the vicinity, less a deduction, in the case of a tenure-holder, of thirty per cent. for profits, risk and cost of collection.

(3) The amount abated from the rent shall bear the same proportion to the rent previously payable

*Bengal Tenancy Bill.**(Chapter IX.—Rent of several classes of Tenants. Secs. 97—102.)*

as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the holding.

B.—Instalments in which money-rents are payable by tenure-holders, raiyats and under-raiyats.

97. A money-rent payable by a tenure-holder shall be paid in such instalments and on such dates as may have been agreed upon between the tenure-holder and his landlord; in the absence of agreement, in such instalments and on such dates as may be customary; and, in the absence of any agreement or custom, in such instalments and on such dates as the Board of Revenue may fix in this behalf for any local area.

98. A money-rent payable by a raiyat or under-raiyat shall, notwithstanding any contract or custom to the contrary, be paid in such instalments, and on such dates, not being more than four in each year, as the Board of Revenue may fix in this behalf for any local area:

Provided that, when the instalments in which, and the dates on which, rent is payable are fixed by an agreement made before the commencement of this Act, or by a custom which has prevailed from before the commencement of this Act, the amount payable on each date fixed by the Board under this section for the payment of an instalment shall be equal to the aggregate of the instalments which would, under the agreement or custom, have fallen due since the date so fixed by the Board for the payment of the last previous instalment.

99. (1) Every order made by the Board of Revenue under section 97 or section 98 shall be made after a consideration of the prevailing customs and the time of harvest in the local area to which it is to apply.

(2) Every such order shall be published in manner prescribed not less than three months before the commencement of the agricultural year in which it is to take effect.

C.—Of the Receipts and Accounts to be given to tenants.

100. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him.

(2) The receipt shall specify—

(a) the date of payment;

(b) the amount paid on account of principal and interest respectively, or, where the payments are made in kind, the quantity and description of produce delivered;

(c) where other money recoverable under any enactment for the time being in force is paid with the rent, the amount so paid.

(d) the holding in respect of which the rent is paid;

(e) the name of the person (if any) registered in the landlord's serishtā as the tenant;

(f) the annual rent payable for the holding and the amount of rent then in arrear; and

(g) the instalment and year on account of which the payment is declared by the tenant to be made, or, in the absence of any such declaration, the instalment and year on account of which it has been credited by the landlord.

(3) The landlord shall prepare and retain a counterpart of the receipt containing similar particulars.

(4) Every receipt which does not contain substantially the above particulars shall be deemed to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

101. (1) Every tenant shall be entitled to receive [B. B. s. 49] from his landlord, within (c.) statement of account at three months after the expiry of each agricultural year, a statement of account for that year showing—

(a) the holding for which the tenant pays rent to the landlord;

(b) the name of the person (if any) registered in the landlord's serishtā as the tenant;

(c) the annual rent payable for the holding;

(d) the amount of rent in arrear at the beginning of the year;

(e) the payments made during the year on account of principal and interest respectively, or, when the payments are made in kind, the quantity and description of produce delivered;

(f) the portion of each payment credited to the rent of the year, and the portion credited to the arrears of previous years; and

(g) the amount, if any, remaining unpaid at the close of the year.

(2) The landlord shall prepare and retain a counterpart of the statement containing similar particulars.

102. (1) If a landlord refuses or neglects to [D. s. 65. B. B. s. 49 (d) and 91.] deliver to a tenant demanding the same a receipt containing the particulars prescribed by section 100 for any rent paid by the tenant.

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts.

*Bengal Tenancy Bill.**(Chapter IX.—Rent of several classes of Tenants. Secs. 103—109.)*

ant, the tenant may, within six months from the date of the demand, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord refuses or neglects to deliver to a tenant demanding the same the statement of account for any year prescribed in section 101, the tenant may, within six months from the date of the demand, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during that year.

(3) If a landlord fails to prepare and retain a counterpart of a receipt or statement as required by section 100 or section 101, he shall be punished with fine which may extend to fifty rupees.

D.—Of the deposit of rent by a tenant in a public office.

[D. s. 99.
C. B. ss. 58
& 59.
B. B. ss. 50
& 51.]

Application to deposit rent in public office.

103. (1) In any of the following cases, namely:—

- (a) when a tenant bound to pay money on account of rent has reason to believe that the person to whom his rent is payable will not be willing to receive the same and to grant him a receipt therefor:
- (b) when the money is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers therefor, and no person has been empowered to receive the rent in their behalf: or
- (c) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent:

the tenant may present, to such officer as the Local Government from time to time appoints in this behalf for the local area in which the holding is situate, an application in writing for permission to deposit in his office the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made, shall be signed by the tenant or, where he is not personally cognizant of the facts of the case, by some person so cognizant, and shall be accompanied by a fee of eight annas.

[D. ss. 99 & 100.
B. B. s. 52.]

104. (1) If it appears to the officer to whom an application is made under section 103 that the applicant is entitled under that section to deposit the rent, he shall receive the rent and give a receipt for the same under his official seal.

(2) A receipt given under this section shall operate as an acquittance for the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if the rent had been received—

- (a) in case (a) of section 103 by the person specified in the application as the

person to whom the rent was payable;

- (b) in case (b) of section 103 by the co-sharers jointly; and

- (c) in case (c) of section 103 by the person entitled to it.

105. (1) The officer receiving a deposit Notification of receipt under section 104 shall forthwith cause to be affixed

in a conspicuous place in his office a notification of the receipt thereof, containing a statement of all material particulars contained in the application under section 103, and, when the deposit is made under section 103, clause (a), shall send a copy of the notification by post in a registered cover to the person to whom the rent is alleged by the depositor to be payable.

(2) If the amount of the deposit is not paid away under section 106 within the period of fifteen days next following the date on which the notification is affixed as aforesaid the officer shall cause a notice of the receipt of the deposit to be served (free of charge) upon every person who he has reason to believe claims or is entitled to the deposit.

106. (1) The officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Revenue-officer under this section; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

107. If no payment is made under section 106 before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given under section 104.

E.—Of arrears of rent.

108. Every arrear of rent shall, unless otherwise provided by a written contract between the parties, be liable to interest at the rate of twelve per centum per annum.

109. If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount

Power to award damages on rent withheld without reasonable cause.

[D. s. 101.
C. B.
B. B.]

[D. s. 102.
C. B.
B. B.]

*Bengal Tenancy Bill.**(Chapter IX.—Rent of several classes of Tenants Secs. 110—118.)*

of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:—

Provided that, when damages are awarded under this section, interest shall not be decreed under section 108.

110. If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum not exceeding twenty-five per centum on the whole amount claimed by the plaintiff as it thinks fit.

111. (1) When an arrear of rent remains due in respect of a non-transferable holding for arrears, the Bengali year where that year prevails, or at the end of the month of Jey where the Pusli or Anli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) A decree passed in favour of the plaintiff in any such suit shall specify the amount of the arrear together with the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

F.—Of rent taken by division or estimation of the crop.

112. Whenever rent is taken by division of the produce, or by estimate or appraisal of the crop, if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the division, estimate or appraisal, or if there is a dispute about the division of the produce, or the quantity or value of the crop, the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, issue a commission to such person as he thinks fit, to divide, estimate or appraise the crop.

113. (1) When a Collector appoints a commissioner for any of the purposes mentioned in section 112, the Collector may, in his discretion, direct the commissioner to associate with himself any other persons as assessors, and may give him instructions regarding the number,

qualifications and mode of selecting those assessors (if any), and the procedure to be followed in making the division, estimate or appraisal.

(2) The commissioner so appointed shall make the division, estimate or appraisal in accordance with those instructions, and submit a report of his proceedings to the Collector.

114. (1) If in any division under section 113 either party receives less than the share to which he is entitled, he may, within three months from the date on which the division is completed, institute a suit against the other party to recover the value of the additional portion of the crop due to him at the price which prevailed on that date.

(2) If no such suit is instituted within the said period of three months, the division shall for all purposes be deemed as between the parties thereto to have been rightly made.

115. (1) When a crop has been estimated or appraised under section 113 the estimate or appraisal shall be reduced to writing and signed by the commissioner making the same, and shall be submitted to the Collector by whom the commission was issued.

(2) The Collector shall consider the commissioner's estimate or appraisal, and, after such hearing and inquiry (if any) as he may think necessary, shall pass an order thereon either confirming or varying the estimate or appraisal; and that order shall be final.

116. All expenses incurred in carrying out the provisions of sections 112 to 115 (both inclusive) shall be payable by the landlord or tenant, or partly by one and partly by the other, as the Collector may in each case direct; and the amount payable by any person under such a direction shall be recoverable from him as if it was an arrear of land-revenue due by him.

117. If the landlord of any land of which the rent is payable in the manner mentioned in section 112, or any other person, interferes in any way, without the consent of the tenant, with the cutting or harvesting of any produce of the land except by an application to the Collector under section 112, he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

118. When the rent payable for land in Bihār is the equivalent money-value of a fixed proportion of the actual gross produce thereof, and such equivalent

XLV of 1860

Bengal Tenancy Bill.

(Chapter IX.—Rent of several classes of Tenants and (Chapter X.—Other Provisions applicable to several classes of Tenants. Secs. 119—126.)

money-value is determined by an estimate or appraisal (*danabandi*) of the standing crop, or by some similar proceeding, the *danabandi* or appraisal papers shall, within fifteen days after the making of the appraisal, be lodged in the office of the Collector of the district.

G.—Further provisions regarding rent.

[B. B. s. 30.] 119. Notwithstanding anything in the foregoing sections of this Act, Limit to rents of raiyats and under-raiyats. or in any contract made after the second day of March, 1883, a raiyat or under-raiyat shall not be bound to pay for his holding a money-rent exceeding five-sixteenths of the estimated average annual value of the gross produce of the holding in staple crops, calculated, in such manner as the Board of Revenue may from time to time, by rules, direct, at the prices at which raiyats sell at harvest time.

120. The rent payable by a tenant in any agricultural year shall be presumed to be the rent payable by him in the following agricultural year until the contrary is shown.

[New.] 121. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a fixed rent, and while the lease or contract is in force—

(a) land-revenue is for the first time made payable in respect of the land, or,

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

[B. B. s. 70.] 122. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has given notice of the transfer to the tenant.

(2) When there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

123. All impositions upon tenants under the denomination of *abwab*, *mah-tut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

124. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding five hundred rupees; or, when double the amount or value of what is so exacted exceeds five hundred rupees, not exceeding double that amount or value.

125. (1) The rent of a tenure, occupancy-holding or *bastu* holding shall be a first charge on the same.

(2) If the right, title and interest of the tenant is brought to sale in execution of a decree for money obtained by a person other than the landlord, the landlord shall be entitled to be first paid out of the sale proceeds any rent which may be due to him by the tenant.

CHAPTER X.

OTHER PROVISIONS APPLICABLE TO SEVERAL CLASSES OF TENANTS.

A.—Of improvements on raiyats' holdings and compensation therefor.

126. (1) For the purposes of this chapter the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the letting-value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) It shall include for those purposes—

(a) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural

*Bengal Tenancy Bill.**(Chapter X.—Other Provisions applicable to several classes of Tenants.**Secs. 127—132.)*

purposes, or waste-land which is culturable;

- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;
- (e) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and
- (f) the erection of a dwelling-house suitable for the raiyat and his family, together with all necessary out-offices.

But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this chapter if it substantially diminishes the value of any other part of the estate or tenure of his landlord.

(3) A work which benefits several holdings shall for the purposes of this chapter be deemed to be, with respect to each of them, an improvement.

B. n. 69.] 127. (1) The landlord of an occupancy-raiyat shall not be entitled as such to prevent the raiyat making an improvement in respect of his holding, and shall not, except as next hereinafter provided, be entitled to make an improvement in respect of the holding without the permission of the raiyat.

(2) A landlord of an occupancy-holding who would, but for the want of his raiyat's permission, be entitled to make an improvement in respect of the holding, may, if he desires that any improvement, other than an improvement of the description mentioned in section 126, clause (f), be made, deliver or cause to be delivered to the raiyat a request in writing calling upon him to make the improvement within a reasonable time; and, if the raiyat is unable or neglects to comply with that request, may make the improvement himself.

B. n. 69.] 128. (1) An ordinary raiyat shall not, except as next hereinafter provided, be entitled to make in respect of his holding without his landlord's permission any improvement other than an improvement of the description mentioned in section 126, clause (f).

(2) An ordinary raiyat, who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

129. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements payable to raiyat on ejection. compensation for improvements which have been made

in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been made.

(2) Whenever a Court makes a decree or order for the ejection of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejection conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat before the commencement of this Act shall be deemed to have been made in accordance with this Act, unless it is shown that the landlord forbade the raiyat to make the improvement and was ready to make it himself.

130. The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under section 129, for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

131. (1) In estimating the compensation to be awarded under section 129 for an improvement, regard shall be had—

(a) to the amount by which the letting-value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(b) to the labour and capital required for the making of such an improvement; and

(c) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement.

(2) When the amount of the compensation has been assessed, the landlord and raiyat may, if they think fit, agree that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

132. A stipulation in a contract providing—

(a) that a landlord shall be entitled to prevent a raiyat from making, or to eject him for making, such improvements on his holding as he is entitled to make under this Act, or

(b) that a raiyat ejected from his holding shall not be entitled to compensation for improvements

*Bengal Tenancy Bill.**(Chapter X.—Other Provisions applicable to several classes of Tenants.
Secs. 133—140.)*

in any case in which he would, under this Act, be entitled to such compensation, shall be void.

B.—Of the landlord's right to measure land.

[D. s. 58.
C. B. s. 75.
B. B. s. 67.]

133. Subject to the provisions of any contract, a landlord may, by himself or by any person authorized by him in this behalf, enter upon and measure all land comprised in any estate or tenure, of the rents of which he is in receipt, except land entered in the general register of revenue-free lands prepared under the Land Registration Act, 1876.

VII (B. C.)
of 1876.

Provided that, when any land has been measured by a landlord, whether before or after the passing of this Act, it shall not, without the written permission of the Collector, be again measured by the landlord within the ten years next following the date on which it was so measured.

Illustration.

A., a proprietor, grants a portion of his estate in patti to B, to whom the raiyats pay rent. Both A and B are entitled to make a general survey and measurement of the lands comprised in the patti lease.

D. s. 94.
B. B. s. 176.]

134. When a landlord desires to measure, under section 133, any land held by his tenant, the tenant shall, if the landlord requires him to do so, attend and point out the boundaries of the land.

D. s. 94.
B. B. s. 176.]

135. (1) When a landlord desires to measure any land under section 133, and any person occupying the land obstructs him in so doing, or any tenant, bound under section 134 to attend and point out the boundaries of his land, refuses or neglects so to do, the landlord may apply to the Court which would have jurisdiction to hear a suit for the recovery of the land, to make an order directing such person to permit the measurement, or such tenant to attend and point out the boundaries, as the case may be.

(2) The Court may, on receiving an application under this section, cause a notice to be served on the occupant or tenant, as the case may be, requiring him to show cause, at a time and place specified therein, why the order applied for should not be made.

(3) If the person on whom a notice is served under sub-section (2) does not show cause as aforesaid, the Court may make the order applied for.

D. s. 94.
B. B. s. 177.]

136. If a tenant ordered under section 135 to attend and point out the boundaries of the land held by him refuses or neglects to do so, a map or other record of the boundaries and

measurements of the land prepared under the direction of the landlord, at the time the tenant was ordered to attend, shall be presumed to be correct until the contrary is shown.

137. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made according to the Government measure of 14,400 square feet to one standard bigha.

Measurement in suits between landlord and tenant to be made according to Government measure.

a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made according to the Government measure of 14,400 square feet to one standard bigha.

(2) If the rights of the parties are regulated by any different local measure, the Government measure shall be converted into the local measure for the purposes of the suit.

138. (1) If any dispute as to the length of a standard used in a local measure arises in any suit under this Act, the Collector shall, on a reference made to him for this purpose by the Court, determine the proper length thereof.

Determination of the length of the standard in case of dispute.

arises in any suit under this Act, the Collector shall, on a reference made to him for this purpose by the Court, determine the proper length thereof.

(2) An appeal shall lie from the Collector's decision to the District Judge.

(3) If no such appeal be preferred, the decision of the Collector, or, if an appeal be preferred, the decision of the District Judge thereon, shall be conclusive.

C.—Of surrender and abandonment.

139. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding; but notwithstanding the surrender he shall continue to be liable for the rent of the holding for the agricultural year next following the date of the surrender, unless—

Surrender by raiyat.

(3)

(a) he gives to his landlord, at least three months before he surrenders, notice in writing of his intention to surrender; or

(b) the holding is let to another person for a agricultural year following the surrender.

(2) If the landlord refuses to receive a notice, tendered to him under clause (a), or to sign a receipt for the same, the raiyat may apply to the Court within the jurisdiction of which the holding or any portion of it is situate, and the Court shall thereupon cause the notice to be served on the landlord.

140. Any tenant of a holding which is not transferable, who leaves his holding uncultivated and the rent of it unpaid for a period of one year, shall, at the expiration of that period, be deemed to have surrendered the holding:

Non-transferable holding in certain cases to be deemed surrendered.

ferable, who leaves his holding uncultivated and the rent of it unpaid for a period of one year, shall, at the expiration of that period, be deemed to have surrendered the holding:

*Bengal Tenancy Bill.**(Chapter X.—Other Provisions applicable to several classes of Tenants.**Secs. 141—145.)*

Provided that, in reckoning that period, any time during which, owing to an inundation or any other accident to the land beyond the tenant's control, it may have been impossible to cultivate the land, shall be excluded.

D.—Of Merger.

141. (1) When in the case of any tenancy the interest of the landlord and that of the tenant become, by transfer, succession or otherwise, united in the same person, so as to be owned by him in the same right, the interest of the tenant shall—

(a) during the period of three months mentioned in sub-section (2) be presumed to be merged in the interest of the landlord and extinguished, unless the person proves that he has not intended it to be merged, and

(b) after the expiration of that period be deemed to be so merged and extinguished, unless within that period the person executes an instrument declaring his intention that a merger shall not take place, and the instrument is registered under the Indian Registration Act, 1877 and is published in the prescribed manner.

(2) The period of three months referred to in sub-section (1) shall, when the interests become united after the commencement of this Act, begin to run from the date on which they become united, and, when they have become united before the commencement of this Act, begin to run from the commencement of this Act:

Provided that, when, at the time the interests become united, the person in whom they become united has not attained his age of majority or is of unsound mind, the period shall not begin to run before he has attained that age or become of sound mind, as the case may be.

(3) A merger under this section shall not operate to the prejudice of any person having a lien upon the interest merged.

(4) When, at the time of a merger taking place in respect of a tenancy under this section, a sub-tenancy exists immediately under that tenancy, the person who becomes the owner of the consolidated interests shall, subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue and to the provisions of this Act as to sales for arrears of rent, have the same rights against, and be subject to the same obligations towards, the sub-tenants, as the owner of the tenant's interest had, and was subject to, before the merger.

E.—Of the appointment of a Manager on behalf of co-owners of an estate or tenure.

142. When co-owners of an estate or tenure disagree as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, upon the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served upon all the co-owners, calling upon them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under Act VII of 1876 passed by the Lieutenant-Governor of Bengal in Council.

143. If the co-owners fail to show cause as aforesaid within one month after service of a notice under section 142, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served upon any co-owner who did not appear before it was made.

144. If the co-owners do not, within one month after the making of an order under section 143, or, where the order has been served as directed by that section, within one month after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may—

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards assents to undertake the management thereof; or

(b) in any case appoint a manager.

145. The Lieutenant-Governor of Bengal may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under section 144, clause (b); and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

Bengal Tenancy Bill.
(Chapter XI.—Settlement of Rents. Secs. 146—155.)

C. B. s. 66 (3).
B. B. s. 58 (3).

IX (B. C.)
of 1879.

C. B. s. 67.
B. B. s. 59.

C. B. s. 68.
B. B. s. 60.

[B. B. s. 72
(5), (6) and
(7).]

[B. B. s. 21
(b), 37.]

146. In any case in which the Court of Wards undertakes the management of an estate or tenure under section 144, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

147. (1) A manager appointed under section 144, clause (b), shall receive by way of remuneration such fixed salary or percentage of the money collected by him as manager as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised.

(4) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts; and

(5) He shall be removeable by the order of the District Judge, and not otherwise.

148. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 144, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that such management will be conducted by them jointly without inconvenience to the public or injury to private rights.

F.—Miscellaneous.

149. No tenant shall be ejected from his holding except in execution of a decree.

150. Nothing in this Act shall entitle a tenant whose holding is transferable to transfer or bequeath, without the consent of his landlord, a portion only of the land comprised in the holding so that it may be held from the landlord by the transferee as a separate holding.

CHAPTER XI.

OF THE SETTLEMENT OF RENTS BY A REVENUE-OFFICER.

151. (1) The Local Government may, if it thinks fit, in any of the cases next hereinafter mentioned, make an order directing that the rents of all tenants or of any class of tenants in any local area shall be settled by Revenue-officers to be from time to time appointed by the Local Government in this behalf.

(2) The cases in which an order may be made under this section are the following, namely:—

(a) where a large proportion of the tenants or of the landlords applies for such an order, and deposits for the payment of expenses such amount as the Local Government directs;

(b) where the making of such an order is calculated to settle or avert a serious dispute existing, or likely to arise, between the tenants and their landlords generally;

(c) where a settlement of revenue is being made in respect of the local area, or the local area is comprised in an estate or tenure owned or managed by the Government or the Court of Wards.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made, and an order so notified shall continue in force until it is rescinded by an order notified in like manner.

152. While an order under section 151 continues in force in respect of any tenants, a Civil Court shall not, except as provided by section 155, clause (b), entertain a suit for the enhancement or reduction of the rents of those tenants under this Act.

153. (1) When the rents of any tenants to whom an order under section 151 applies are subject to alteration by order of a Court, the officer appointed to settle the rents of those tenants under this chapter shall, without any application being made to him in this behalf, fix those rents in accordance with the principles embodied in this Act, and so that no rent fixed under this section shall exceed the maximum prescribed by this Act in cases of enhancement.

(2) Where the Local Government has, under this chapter, directed a settlement of the rents of the occupancy-raiyats of any local area, and a table of rates and produce has not been prepared under Chapter VI for that local area, it may further direct the officer appointed to settle the rents to prepare such a table before proceeding to fix the rents of those raiyats.

154. When the rents of any tenants to whom an order under section 151 applies are not subject to alteration as aforesaid, the officer appointed to settle the rents of those tenants shall, without any application being made to him in this behalf, ascertain and record the rents payable by them.

155. (1) If in the course of the proceedings taken for fixing the rent of a tenant under section 153 any question arises which, in the opinion of the officer conducting

Power to refer question to Civil Court or leave case to be dealt with by Civil Court.

*Bengal Tenancy Bill.**(Chapter XI.—Settlement of Rents. Secs. 156—161.)*

those proceedings, would be more properly decided by a Civil Court, the officer may in his discretion, but subject to any rules made by the Local Government in this behalf,

(a) refer the question for decision to the Civil Court which would, but for section 152, have had jurisdiction to try a suit for the enhancement or reduction of the rent, or

(b) by order in writing direct that the tenant's case be excluded from the operation of this chapter and be left to be disposed of by suit in a Civil Court, as if the order under section 151 did not apply to it.

(2) When a Revenue-officer makes a reference under clause (a) of this section in respect of a tenant, he may either stay his proceedings in respect of that tenant, or, if the nature of the case admits of his doing so, pass an order in alternative form or otherwise fixing the rent contingent upon the decision of the Civil Court.

156. (1) A Revenue-officer settling rents under Preparation of jama- this chapter shall prepare, in bandi. the prescribed form, one or more jamabandis, comprising all or such numbers of the tenants whose rents he is appointed to settle as the Board of Revenue may direct.

(2) Every jamabandi prepared under this section shall show in respect of each tenant comprised therein—

(a) the class to which he belongs, that is to say, whether he is a tenure-holder, occupancy-raiyat, tenant of a bastu holding, ordinary raiyat or under-raiyat ;

(b) the land held by him ;

(c) the name of his landlord ;

(d) whether the rent has been fixed under section 153 or ascertained under section 154 ;

(e) the amount of the rent fixed or ascertained, and, when the rent is a gradually increasing one, the time at which, and the steps by which, it increases.

157. Every jamabandi prepared under section 156 Publication of jama- shall be published in the pre- bandi and objections scribed manner, and any thereto. person objecting to any entry therein may, within one month from the date of the publication, present to the Revenue-officer, for transmission to the Commissioner of the Division, a petition stating his objection to the entry.

158. (1) On the expiration of the said period of one month, the Revenue-officer shall submit to the Commissioner of the Division Submission of jama- a copy of the jamabandi, bandi and petitions of objection to the Commis- sioner and Board. with a report setting forth the grounds on which it has been prepared, and the petitions of objection (if any) which he may have received under section 157.

(2) The Commissioner shall consider the jamabandi and report, and the objections (if any), and, after allowing the objectors (if any) an opportunity of being heard, shall forward the papers to the Board of Revenue with his opinion regarding the same.

159. (1) The Board of Revenue may return the papers for further inquiry, Sanction to and final publication of jama- or may submit the jama- bandi, and date from which it comes into force. bandi with or without modifications to the Local Government for sanction.

(2) The Local Government may return for further inquiry the papers received under subsection (1) or may sanction the jamabandi with or without modification.

(3) When a jamabandi has been sanctioned by the Local Government under this section, it shall be published in the prescribed manner.

(4) A jamabandi published under this section shall come into force from the commencement of the agricultural year next following the publication.

160. When a jamabandi has come into force under section 159, a tenant's Rent fixed under fore- going provisions to be deemed the rent payable. der section 153 shall be deemed to be the rent payable by him, and shall not, during the period of ten years next following the date on which the jamabandi comes into force, be enhanced in a suit instituted under this Act, except on the ground that since the jamabandi came into force an improvement has been made by the landlord which, but for this section, would entitle him to an enhancement :

Provided that—

(1) such rent may from time to time be altered in any other manner permitted by law : and

(2) nothing in this section shall prevent the rent shown in a jamabandi in respect of a tenancy from being called in question on any of the following grounds, namely :—

(a) that the tenancy does not exist or that the tenant is not liable to pay rent ;

(b) that the tenant belongs to a class different from that to which he is shown in the jamabandi to belong ;

(c) that the land comprised in the tenancy is different from, or more or less than, that shown in the jamabandi ;

(d) that a rent different from that shown in the jamabandi has been fixed by a contract legally binding on the parties, and which has been brought to the notice of the officer preparing the jamabandi.

161. When a jamabandi has been published under section 159 a tenant's Rent ascertained under foregoing provisions to be presumed to be the rent payable. rent shown therein as, ascertained under section 154, shall be presumed to be the

*Bengal Tenancy Bill.**(Chapter XII.—Preparation of Record-of-rights by a Revenue-officer and Chapter XIII.—Recovery of Rents. Secs. 162—166.)*

rent payable by that tenant until the contrary is shown.

162. An entry made in a jamabandi under Certain other entries in clause (a), clause (b) or jamabandi to be pre- clause (c) of section 156-
sumed to be correct. shall, after the jamabandi has been published under section 159, be presumed for all purposes to be correct until the contrary is shown.

163. All expenses incurred by the Government Expenses incurred in in carrying out the provi-
proceedings under this sions of this chapter in any
chapter how defrayed. local area, in any case men-
tioned in section 151, clause (a) or clause (b), in-
cluding the salaries of all officers employed exclu-
sively in carrying out those provisions therein, and
such portions as the Local Government may from
time to time fix of the salaries of officers em-
ployed in carrying out those provisions therein
in addition to their other public duties, shall be
defrayed by the landlords and tenants in that
local area whose rents are fixed or ascertained
under this chapter, in such proportions as the
Local Government, having regard to all the cir-
cumstances of each case, may determine; and
the proportion of those expenses so to be de-
frayed by any person shall be recoverable from
him as if it were an arrear of revenue due by him.

CHAPTER XII.

OF THE PREPARATION OF A RECORD-OF-RIGHTS BY
A REVENUE-OFFICER.

164. (1) The Local Government may, in any case Power to order pre- with the previous sanction
paration of record-of- of the Governor General in
rights. Council, and may, if it thinks
fit, without such sanction in any of the cases next
hereinafter mentioned, make an order directing
that a record-of-rights shall be prepared for all
tenancies or any class of tenancies in a local area
by Revenue-officers to be from time to time ap-
pointed by the Local Government.

(2) The cases in which an order may be made
under this section without the previous sanction of
the Governor General in Council are the follow-
ing, namely:—

- (a) where a large proportion of the landlords or
of the tenants applies for such an order
and deposits for the payment of expenses
such amount as the Local Government
directs;
- (b) where the preparation of such a record is cal-
culated to settle or avert a serious dis-
pute existing or likely to arise between
the tenants and their landlords generally;
and

(c) where the local area is comprised in an es-
tate or tenure which belongs to or is
managed by the Government or the
Court of Wards.

(3) The Local Government shall, in any order
made by it under this section, specify the parti-
culars to be included in the record-of-rights to be
prepared under that order.

(4) The particulars so specified may be all or
some of the following, namely:—

- (a) the name of each tenant;
- (b) the class to which he belongs, that is to say,
whether he is a tenure-holder, occupancy-raiyat,
tenant of a bastu holding, ordinary raiyat or
under-raiyat;
- (c) the land held by him;
- (d) the name of his landlord;
- (e) the rent payable;
- (f) the mode in which that rent has been fixed,
whether by contract, by order of a Court or other-
wise.

(5) A notification in the official Gazette of an
order under this section shall be conclusive evi-
dence that the order has been duly made.

165. Every entry in a record-of-rights pre-
pared under section 164
Presumption as to en- shall be presumed to be
tries in record. correct until the contrary is
proved.

CHAPTER XIII.

OF THE RECOVERY OF RENTS FROM RAIYATS AND
UNDER-RAIYATS BY DISTRAINING THE PRODUCTS
OF THE HOLDING.

166. Where an arrear of rent is due to the land-
lord of a raiyat or under-
Cases in which an application for distraint may be made. raiyat, and has not been due
for more than a year, and no
security has been accepted therefor by the land-
lord, the landlord may, in addition to any other
remedy to which he is entitled by law, present an
application to the Court, having jurisdiction to
entertain a suit for the recovery of the arrear,
requesting the Court to recover the arrear by dis-
training, while in the possession of the cultivator,

- (a) any crops or other products of the earth
standing or ungathered on the holding;
- (b) any crops or other products of the earth
which have been grown on the holding
and have been reaped or gathered and
are deposited on the holding, on a
threshing-floor, or place for treading out
grain or the like (whether in the fields
or within a homestead) or in a storehouse.

Provided that an application shall not be made
under this section—

(1) by a proprietor or manager as defined under VII
the Bengal Land Registration Act, 1876, or a 1876

*Bengal Tenancy Bill.**(Chapter XIII.—Recovery of Rents. Secs. 167—172.)*

mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(3) in respect of the produce of any part of the holding which the tenant has sublet with the written consent of the landlord.

167. (1) Every application under section 166 shall specify—
Form of application and fee payable.

(a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(b) the name of the tenant;

(c) the period in respect of which the arrear is claimed;

(d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding as the case may be, under which that amount is payable;

(e) the nature and approximate value of the produce to be distrained; and

(f) the place where it is to be found, or such other particulars as may suffice for its identification.

(2) Every such application shall be liable to the court-fee which would be payable in a suit instituted for the recovery of the arrear therein claimed.

(3) Every such application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints; and, if the application so verified contains any averment which the person making the verification knows or believes to be false or does not know or believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

168. (1) The applicant shall, at the time of filing an application under section 166, or as soon after as the Court permits, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.
Procedure on receipt of application.

(2) The Court may examine the applicant, and may admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

169. If the application is admitted, the Court [B.B.s. 107.] shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Procedure if application is admitted.

Provided that produce, which from its nature does not admit of being stored, shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering. [B.B.s. 111.]

170. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, together with an account exhibiting the grounds on which the distraint is made. [B.B.s. 108.]

Service of demand and account.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on the outer door of the house in which he usually resides.

171. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation. [B.B. ss. 109 and 110.]

Right to reap, &c., produce.

(2) In default of the person entitled to do so, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and shall store the same in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood.

(3) In either case the distrained property shall be placed in the charge of the distraining officer, or of some other person appointed by him in this behalf.

172. (1) Unless the demand, with all costs of the application for distraint, be immediately satisfied, an officer distraining property
Sale proclamation to be issued unless demand is satisfied.

*Bengal Tenancy Bill.**(Chapter XIII.—Recovery of Rents. Secs. 173—182.)*

under section 169 shall issue a proclamation specifying the particulars of the property distrained and demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

[B.B. s. 114.] 173. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

[D. s. III.] 174. Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter upon the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

[B. B. s. 115.] 175. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

[B.B. s. 116.] 176. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day or (if a market be held at the place of sale) the next market-day, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property.

[B.B. s. 117.] 177. The price of every lot shall be paid in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary, and in default of such payment the property shall be put up again and sold.

[B.B. s. 118.] 178. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

[B. B. s. 119.] 179. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay to the applicant for distraint the expenses incurred by

him on account of the distraint, calculated on a scale of charges prescribed by rules to be made by the Board of Revenue in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale, and the surplus (if any) shall be paid to the person whose property has been sold.

180. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

181. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 170, together with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay the same into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay over the same to the applicant for distraint, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

182. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under section 181, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and, if that landlord is not the defaulter, he shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under section 181 to institute a suit for the recovery from

*Bengal Tenancy Bill.**(Chapter XIII.—Recovery of Rents. Secs. 183—192.)*

the defaulter of any portion of the amount paid which he has not deducted under this section.

126.] **183.** When land is sublet, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

184. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail, but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid to the owner of the property under section 179 without the sanction of the Court by which the order of attachment or sale was issued.

91. **185.** Any person who, otherwise than in accordance with this Act or some other enactment for the time being in force, distrains or attempts to distrain the produce of a tenant's holding, or prevents or attempts to prevent any person from reaping, gathering, storing, removing or otherwise dealing with any produce of the holding, shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

186. When any offence punishable under section 185 is committed for the benefit of, or in behalf of, any person owning or claiming any interest in the land in respect of which the offence is committed, or having or claiming any interest in a dispute which has led to the commission of the offence, or when any person has accepted or derived any benefit from the commission of any such offence, he shall be punished with imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both, if, having reason to believe that the offence was likely to be committed, he has not used all lawful means in his power to prevent its commission.

187. (1) The Local Government may, by an order published in the official Gazette, suspend the provisions of sections 166 to 184 (both inclusive) in any local area for such time as it thinks proper.

(2) So long as an order under this section continues in force, in respect of any local area, no Court shall receive an application for distraint for arrears of rent due on lands situate within that local area.

CHAPTER XIV.

SPECIAL RULES OF PROCEDURE APPLICABLE TO SUITS BETWEEN LANDLORD AND TENANT.

A.—Rules applicable to suits between landlord and tenant generally.

188. The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties.

189. Every nâib or gumâshita of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending.

190. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf.

B.—Rules applicable to particular classes of suits between landlord and tenant.

191. Sections 121 to 127 (both inclusive), 129, 194 to 197 (both inclusive), 305, and 320 to 325C (both inclusive) of the Code of Civil Procedure shall not apply in any suits of the following classes between landlord and tenant as such, namely:—

- (a) suits for the recovery of rent;
- (b) suits for penalties claimable under any provision of this Act;
- (c) suits to recover possession of the land.

192. The plaint in every suit of a description mentioned in section 191 shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the extent, situation, designation and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the boundaries, in lieu thereof a description sufficient for identification.

*Bengal Tenancy Bill.**(Chapter XIV.—Procedure in Suits between Landlord and Tenant. Secs. 193—202.)*

D. s. 192.
C. B. s. 173.
B. B. s. 195.

193. The summons shall in every such suit be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only.

194. The service of a summons on a defendant in any such suit may, if the Court so directs, be effected by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post, Office Act, 1866.

XIV of 1866.
D. s. 108.
C. B. s. 184.
B. B. s. 206.

195. A written statement shall not be filed in any such suit without the leave of the Court.

B. B. s. 214.
XIV of 1882.

196. The rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply in all such suits whether an appeal is allowed in them or not.

D. ss. 177 & 223.
C. B. ss. 155 & 197.
B. B. ss. 171 & 219.

197. When a decree, not being a decree of the description referred to in section 111, sub-section (2), is passed in any such suit, the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof.

D. s. 179.
C. B. ss. 157 & 220.
B. B. ss. 173 & 242.

198. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal in any suit instituted by a landlord, for arrears or by a tenant for a penalty claimable under any provision of this Act where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, and, if he is satisfied that a failure of justice has been caused by a substantial error, defect or irregularity in the proceedings or in the decision, may pass such order as he thinks fit.

199. (1) When, in a suit for an arrear of rent [New.] instituted against a tenant, the defendant admits that the arrear is due by him, but pleads that it is due to a person other than the plaintiff, the Court may, if it thinks fit, refuse to take cognizance of the plea until the defendant has paid the amount of the arrear into Court.

(2) When the amount of an arrear has been paid into Court under this section, the Court shall give the defendant a receipt for the same, and the receipt so given shall operate as an acquittance for the arrear, in the same manner and to the same extent as if it had been paid to the person entitled to it.

(3) The Court shall forward the amount paid in to the officer to whom an application to deposit the rent would be made under section 103 and it shall thereupon be deemed to be a deposit received under clause (c) of that section.

200. Notwithstanding anything contained in [C. B. s. 1] section 232 of the Code of [B. B. s. 2] Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become, and is vested in him.

201. (1) A decree for enhancement of rent under [B. B. s. 130, cl. 1] this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall not take effect before the commencement of the agricultural year next following, and, if passed in a suit instituted in the last four months of the agricultural year, shall not take effect before the commencement of the agricultural year next but one following.

(2) Subject to the provisions of sub-section (1), it shall be in the discretion of the Court to fix the date from which any such decree shall take effect.

202. (1) A suit for the ejectment of a tenant, [B. B. s. (c), 31, 45 Vic. s. 14] on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has requested the tenant, where the damage or breach is capable of remedy, to remedy the same, and, in any case, to pay reasonable compensation for the damage or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the damage or breach, and whether, in

Bengal Tenancy Bill.

(Chapters XIV, XV.—*Procedure in Suits between Landlord and Tenant. Sale of Transferable Holdings in Execution, &c. Secs. 203—208.*)

the opinion of the Court, the damage or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the damage or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may from time to time extend a period fixed by it under sub-section (2) for remedying a damage or breach.

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the damage or breach is declared by the Court to be capable of remedy, remedies the damage or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

203. The following rules shall be applicable in the case of every raiyat ejected from a holding:—

(a) When the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment.

(b) When the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value:

Provided that a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section when, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.

204. When a landlord elects, under section 203, clause (a), to allow a raiyat to retain possession of any land for the purpose specified in that clause, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

205. In all suits and proceedings for ejectment, the Court shall inquire into and determine all claims under this Act by the landlord against the tenant as such, or by the tenant against the landlord as such. ^[New.]

206. (1) When it appears to a Court making an inquiry under section 205 that the amount payable by the landlord to the tenant as such exceeds the amount payable by the tenant to the landlord as such, the decree or order for ejectment (if any) shall, unless the landlord and tenant come to an arrangement regarding the payment of the excess sum, specify a time within which it must be paid into Court.

(2) If it is so paid within the time specified, the Court shall eject the tenant; and

if it is not so paid, the Court shall refuse to eject the tenant.

C.—*Suit to determine status, &c., of tenant.*

207. Every landlord may institute a suit against his tenant, and every tenant against his landlord, for the determination of all or any of the following matters, namely:—

- (a) the land held by the tenant;
- (b) the class to which he belongs, that is to say, whether he is a tenure-holder, occupancy-raiyat, tenant of a basti holding, ordinary raiyat, or under-raiyat, and, if he is a tenure-holder, whether his rent is liable to enhancement; and
- (c) the rent payable by him at the time the suit is instituted.

CHAPTER XV.

OF THE SALE OF TRANSFERABLE HOLDINGS IN EXECUTION OF DECREES FOR ARREARS DUE ON THEM.

208. (1). "Incumbrance" in this chapter, used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created upon the holding by the tenant in limitation of his own interest therein, except—

- (a) a tenure existing from the time of the permanent settlement;
- (b) a tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) a tenure of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals,

*Bengal Tenancy Bill.**(Chapter XV.—Sale of Transferable Holdings in Execution, &c. Secs. 209—214.)*

places of worship or burning or burying grounds have been made ;

(d) a right of occupancy,

(e) a right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and

(f) any right or interest which the landlord has expressly and in writing given the tenant permission to create.

[C. B. s. 206
Expl.
B. B. s. 228
Expl.]

(2) "Registered incumbrance" in this chapter, used with reference to a tenancy on which an arrear of rent is due, means any incumbrance which the defaulter or his predecessor in interest has created by an instrument registered under the Registration Act for the time being in force, and of which, after it has been registered, a copy has been served on the landlord under section 223, not less than six months before the arrear became due.

[C. B. s. 201.
B. B. s. 223.]

209. (1) When a decree has been passed for an arrear of rent due for a transferable holding, and the decree-holder applies under

XIV of 1882.

section 235 of the Code of Civil Procedure for the attachment and sale of the holding in execution of the decree, his application shall contain, in addition to the particulars specified in that section and section 237 of the said Code, a statement of the annual rent of the holding.

(2) When the holding is a permanent tenure, there shall be filed with the application a copy of so much of the register kept under Chapter III as relates to the tenure.

[D. s. 152.
C. B. s. 203.
B. B. s. 225.]

210. (1) When an order has been passed for the sale of a holding upon an application made under section 209, the proclamation

XIV of 1882.

made under section 257 of the Code of Civil Procedure shall, in addition to stating and specifying the particulars mentioned in that section, announce—

(a) in the case of a tenure, that the tenure will first be put up to auction subject to the registered incumbrances and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day of which due notice will be given with power to annul all incumbrances ; and

(b) in the case of an occupancy-holding, or bastu holding, that the holding will be sold with power to annul all incumbrances.

(2) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published in such manner as the Local Government may, from time to time, direct in this behalf.

211. (1) When a tenure has been advertised for sale under section 210, it shall be put up to auction, subject to registered incumbrances ; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 214, and not otherwise, annul any incumbrance upon the tenure not being a registered incumbrance.

212. (1) If the bidding for a tenure put up to auction under section 211 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree holder thereupon desires that the tenure be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement ; and upon that day the tenure shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 214, and not otherwise, annul any incumbrance on the tenure.

213. (1) When an occupancy-holding or bastu holding has been advertised for sale under section 210, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 214, and not otherwise, annul any incumbrance on the holding.

214. (1) A purchaser having power to annul an incumbrance under section 211, section 212, or section 213, and desiring to avoid the same, may within one year from the date on which he first has notice of the incumbrance, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for a service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

*Bengal Tenancy Bill.**(Chapter XV.—Sale of Transferable Holdings in Execution, &c. Secs. 215—222.)*

215(c). **215 (1)** The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings in that local area shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

216. **216. (1)** In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

(a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(b) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

(c) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(d) The balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

214. Holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

217. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a holding in execution of such a decree has been made, the holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(3) Nothing in this section shall affect the right of any person to institute a suit to set aside the sale of a holding under this chapter.

218. (1) When any person having, in a holding advertised for sale under this chapter, an interest which would be voidable upon such sale, pays into Court the amount requisite to prevent the sale,

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum and secured by a mortgage of the holding to him;

(b) his mortgage shall, subject to the provisions of section 125, be deemed to be the first charge on the holding; and

(c) he shall be entitled to take possession of the holding as mortgagee, and retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

219. When a holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and, if that landlord is not the defaulter, he may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

220. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may without the permission of the Court bid for or purchase the holding.

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

221. Sections 313 and 326 of the Code of Civil Procedure shall not apply to any sale under this chapter.

222. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any transferable holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

223. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a transferable holding and creating an incumbrance on the holding, shall, at the request

D. ss. 35, 36
154.
C. B. s. 205.
B. B. s. 227.

D. ss. 35, 36,
154.
C.
B. B. s. 227.

C. B. s. 205(1).
B. B. s. 230(1).
XIV of 1882.

XIV of 1882.

New.

III of 1877.

C. B. s. 206
Expl.
B. B. s. 228
Expl.

*Bengal Tenancy Bill.**(Chapter XVII.—Supplementary. (Schedule I.—Repeal of Enactments.)*

of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, cause a copy of the instrument to be served on the landlord in the manner prescribed in Part VII of the Indian Registration Act, 1877, for the service of summons.

III of 1877.

CHAPTER XVI.

OF LIMITATION.

224. The suits, appeals and applications specified in Schedule IV annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

XV of 1877.

225. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in section 224.

Portions of the Indian Limitation Act not applicable to such suits, &c.

CHAPTER XVII.

SUPPLEMENTARY.

226. Nothing in this Act shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

227. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same; and

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil.

228. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

229. Any appearance, application or act in, before, or to, any Court or other authority required or authorized by this Act to be made or done by a landlord may, unless the Court or authority otherwise directs, be made or done also by a náib or gumáshta of the landlord empowered in this behalf by a written authority under the hand of the landlord; and every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, a náib or gumáshta of the landlord empowered as aforesaid to accept service of or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

230. The provisions of this Act applicable to suits for the recovery of rights of pasturage, arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

SCHEDULE I.

(See Section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793 .	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zemindars, independent talukdars, and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 26th November 1789, and the 10th February 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64, and 65.
XII of 1805 .	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattápur, Kummadichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V of 1812 .	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.

Bengal Tenancy Bill.

(Schedule I.—*Repeal of Enactments, and Schedule II.—Extract from Preamble to Regulation VIII of 1819.*)

SCHEDULE I—*contd.*

Number and year.	Subject of Regulation.	Extent of repeal.	Number and year.	Subject of Act.	Extent of repeal.
XVIII of 1812 .	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XI, IV, 1793, and Sections 3 and 4, Regulation I, 1795, and enacting other rules in lieu thereof.	Preamble and Sections 2 and 3.	VIII of 1869 .	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1819 .	A Regulation to declare the validity of certain tenures, and to define the relative rights of zamindárs and patni taluqdárs; also to establish a process for the sale of such taluqs in satisfaction of the zamindár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.	VIII of 1879 .	An Act to define and limit the powers of Settlement officers.	The whole Act.
I of 1820 .	A Regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamindár's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whole Regulation.	<i>Acts of the Governor General in Council.</i>		
XI of 1825 .	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In Clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the Clause.	XXV of 1850 .	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
			XXXIII of 1850 .	An Act for amending the forms necessary for the sale of patni tenures in Bengal.	The whole Act.
			VI of 1853 .	An Act relating to summary suits for arrears of rent, to sales of patni taluqs and other saleable Tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
			X of 1859 .	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862 .	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
VIII of 1865 .	An Act to amend the law for the sale of such undertenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.	The whole Act.
IV of 1867 .	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.

SCHEDULE II.

(See Section 36.)

Extract from Preamble to Regulation VIII of 1819.

"In the exercise of the privilege * * * conceded to zamindárs under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Bardwán, but has since been extended to other zamindáris; the character of which tenure is, that it is a taluq created by the zamindár, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamindár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamindár.

Bengal Tenancy Bill.
(Schedule III.—Summary Sale of Patni Tenures.)

"By the terms also of the engagements interchanged, it is, amongst other stipulations, provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamindár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

"These tenures have usually been denominated patni taluqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons who, on taking such leases, went by the name of darpatni taluqdárs; these, again, sometimes similarly underlet to bepatnidárs; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder."

SCHEDULE III.

SUMMARY SALE OF PATNÍ TENURES.

(See section 42.)

Extract from Regulation VIII of 1819, amended in accordance with subsequent enactments.

8. *First.*—Zamindárs, that is, proprietors under direct engagements with the Government, shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.

The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

Second.—On the first day of Baisákh, that is, at the commencement of the following year from that in which the rent is due, the zamindár shall present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any taluqdárs or other holders of an interest of the nature described in the preceding clause of this section.

The same shall then be stuck up in some conspicuous part of the kachahri, with a notice that if the amount claimed be not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

Should, however, the first of Jeth fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the sadr kachahri of the

zamindár himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the kachahri or at the principal town or village upon the land of the defaulter.

The zamindár shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kachahri of the nearest munsif, or if there should be no munsif, to the nearest thaná, and there make voluntary oath of the same having been duly published; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Third.—On the first day of Kártik, in the middle of the year, the zamindár shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asir, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the zamindár, according to the kistbandi, calculated from the commencement of the year to the last day of Kártik.

9. All sales of saleable tenures applied for under the rules of this Regulation shall be made in public kachahri; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount